No. 89-964-CFY
Status: GRANTED

Title: Raymond J. Moskal, Sr., Petitioner
v.
United States

Docketed:
December 16, 1989

Court: United States Court of Appeals
for the Third Circuit

Counsel for petitioner: Hart,Dennis M.

Counsel for respondent: Solicitor General

Entry	Date	Note	Proceedings and Orders
1	Dec 16 1989	G	Petition for writ of certiorari filed.
3	Jan 18 1990		Order extending time to file response to petition until February 16, 1990.
4	Feb 16 1990		Brief of respondent United States filed.
5	Feb 21 1990		DISTRIBUTED. March 16, 1990
6	Mar 19 1990		Petition GRANTED. **********
7	May 2 1990		Joint appendix filed.
8	May 2 1990		Brief of petitioner Moskal filed.
9	Jun 20 1990		Brief of respondent United States filed.
10	Jul 2 1990		CIRCULATED.
11	Jul 23 1990		SET FOR ARGUMENT MONDAY, OCTOBER 1, 1990. (2ND CASE)
12	Jul 26 1990	X	Reply brief of petitioner Moskal filed.
13	Aug 31 1990		Record filed.
		*	Certified copy of original record received.
14	Sep 13 1990		Record filed.
		*	Certified copy of C. A. Proceedings received.
15	Oct 1 1990		ARGUED.

89-964

Supreme Court, U.S.
FILED
DEC 16 1989
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE

Supreme Court Of The United States

October Term 1989

RAYMOND J. MOSKAL

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

Petition for a Writ of Certiorari to The United States Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

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23 pp

QUESTION PRESENTED

Did the opinion of the United States Court of Appeals for the Third Circuit which affirmed the petitioner's conviction conflict with an earlier decision of the United States Court of Appeals for the Tenth Circuit upon which the petitioner was entitled to rely in the presentation of his defense to certain criminal charges?

PARTIES INVOLVED

The following individuals appeared as defendants at the District Court and as appellants in the Court of Appeals: Raymond J. Moskal, Alvin C. Davis and Dennis H. Smith.

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No.

IN THE

Supreme Court Of The United States

October Term 1989

RAYMOND J. MOSKAL

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

Petition for a Writ of Certiorari to The United States Court of Appeals for the Third Circuit

Petitioner Raymond J. Moskal prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered on October 18, 1989, affirming his conviction for securities fraud in violation of 18 U.S.C. 2314.

OPINION BELOW

The United States Court of Appeals for the Third Circuit[1] issued an opinion on October 18, 1989, which affirmed the petitioner's convictions in all respects. The opinion has not yet been reported but is scheduled to appear at 888 F.2d 283. The opinion and judgment are attached to this petition in Appendix A.

[1]The decision was rendered by a panel of judges assigned from the Second Circuit sitting by designation pursuant to 28 U.S.C. 291.

JURISDICTION

The opinion of the United States Court of Appeals for the Third Circuit was issued on October 18, 1989. This Court has jurisdiction pursuant to 28 U.S.C. ~~1257~~. 1254.

STATUTES INVOLVED

The petitioner was convicted of violation of 18 U.S.C. 371; 18 U.S.C. 513 and 18 U.S.C. 2314. Jurisdiction for review by the Court of Appeals for the Third Circuit is 28 U.S.C. 1291. The substantive criminal statutes are reproduced in Appendix B at page 1

STATEMENT OF FACTS

Petitioner seeks review of the October 18, 1989, decision of the United States Court of Appeals for the Third Circuit which affirmed his convictions. Petitioner submits that the opinion below which affirmed his convictions is in direct conflict with a prior decision from the Tenth Circuit and upon which he relied in the formulation of his defense.

On September 13, 1988, a five count indictment was filed in the United States District Court for the Middle District of Pennsylvania which alleged that the petitioner and two others (Alvin C. Davis and Dennis H. Smith) conspired between themselves and others to violate 18 U.S.C. 513 (Counterfeit Securities) and 18 U.S.C. 2314 (Transportation of Fraudulent Securities) in the context of a wholesale used car dealership located in Manheim, Pennsylvania. The indictment alleged that the conspiracy took place between December of 1984 and July of 1985 and involved the rollback of used car odometers and the subsequent "washing" of titles through the use of title transfers in the Commonwealth of Virginia and State of Pennsylvania.

In the conspiracy count (Count 1), the government alleged that high mileage used cars were bought by the defendants and others for the purposes of turning back the odometers and obtaining new titles that reflected the lower mileage. The cars were then sold to unknowing customers at a higher price than could be obtained for vehicles of such mileage.

The government alleged that the low mileage titles were obtained by a title washing scheme which relied upon original titles altered in Pennsylvania by co-conspirators and sent to additional co-conspirators in Virginia. Once in Virginia, these individuals (who were not then on trial) would apply for new Virginia titles which, when issued, reflected the lower mileage of the original altered documents. The new Virginia titles were then returned to the wholesale used car dealership at which the petitioner was employed in Manheim, Pennsylvania, where the car was then sold to a retail Pennsylvania used car dealer and a Pennsylvania automobile title subsequently obtained.

On January 12, 1989, the jury returned a verdict of guilty on all counts. Both co-defendants Smith and Davis were also found guilty on all counts. On March 20, 1989, the petitioner was sentenced to a term of six months.

On October 18, 1989, a panel of judges sitting by designation for the Third Circuit Court of Appeals, affirmed the petitioner's convictions in all respects. A copy of that decision is attached as Appendix A.

REASONS FOR GRANTING THE WRIT

It is undisputed that the government's proof at trial demonstrated that the automobile titles were altered in Pennsylvania by someone other than the petitioner. It was also undisputed that the Virginia titles obtained by the used car dealer in Virginia and sent to the present petitioner were not themselves altered in any way. There was no dispute that the Virginia titles were validly issued, albeit with an incorrect mileage figure. Yet the government indicted the petitioner and his other co-defendants under 18 U.S.C. 2314 for the transportation in interstate commerce of the Virginia titles only. At the close of the evidence, the petitioner objected to the District Court on the grounds that the Virginia titles were not forged, altered, counterfeited or falsely made. The District Court concluded otherwise and let the case proceed to the jury.

The petitioner challenged that decision as contrary to the holdings of several courts who considered the question, including *United States v. Sparrow*, 635 F.2d 794 (10th Cir. 1980). *cert. denied*, 450

U.S. 1004 (1981) The decision of the Third Circuit acknowledges the holding of *Sparrow*, but concluded that the "better rule" is represented *United States v. Cotoia*, 785 F.2d 497 (4th Cir. 1986) and *United States v. Daly*, 716 F.2d 1499 (9th Cir. 1983), *cert. denied*, 465 U.S. 1075 (1984). Petitioner disagrees.

Section 2314 of Title 18 of the United States Code provides that:

> Whoever with unlawful or fraudulent intent transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered or counterfeited...
>
> Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

Petitioner asserts that the transportation of the Virginia titles for which he was convicted does not qualify as "falsely made, forged, altered or counterfeited" document within the meaning of Section 2314. While the Petitioner admits that these titles may have contained incorrect mileage figures and that the presence of such a figure may be violative of various state or federal statutes (none of which he was charged with), petitioner believes that the interstate transportation of such titles does not violate Section 2314.

The Third Circuit appears to have adopted the rationale that an item is fraudulent if it contains a single error that is present for whatever reason and regardless of the authenticity of the actual document.Petitioner suggests that such a brush is far too broad.

The first court to petitioner's knowledge to consider this question under nearly identical circumstances agreed that the interstate transportation of valid automobile titles with incorrect mileage statements was not, in itself, a violation of the statute. *United States v. Rudge*, 474 F.Supp. 360 (S.D.Iowa 1979). Significantly, the government never elected to appeal that decision.

Several years after *Rudge*, the lOth Circuit considered the same question in *United States v. Sparrow*, 614 F.2d 229 (lOth Cir. 1980). In the initial panel decision, the Court concluded that an automobile title which contained false information as to ownership is a forged or falsely made security. Upon consideration by the full court however,

the convictions of Mr. Sparrow under Section 2314 were vacated because "the certificates of title was duly executed by Oregon officials. The certificate of title itself was precisely what it purported to be. Only the facts underlying the document were false." *United States v. Sparrow*, 635 F.2d 794, 796 (*en banc*) (lOth Cir.), *cert. denied* 450 U.S. 1004 (1981).

In the *Sparrow* decision, the lOth Circuit mentioned several prior cases and contrasted their support for the proposition that a document is not covered within the purview of Section 2314 if, although containing false information, is neither forged nor altered. *See, Marteney v. United States*, 216 F.2d 760 (lOth Cir. 1954) [no violation of Section 2314 although false information on the document]; *United States v. Crim*, 527 F.2d 289 (lOth Cir. 1975), *cert. denied* 425 U.S. 905 (1976) [a false signature rendered the execution of documents false]. *Sparrow* remains today the rule within the lOth Circuit. Had petitioner been charged within the jurisdiction of that Circuit, the indictment would have been dismissed pre-trial.

In considering Section 2314 in the context of other securities, Courts have concluded that the addition of false information to otherwise valid documents does not make the documents "falsely made" and have reversed Section 2314 convictions. *United States v. Massa*, 740 F.2d 629, 646 (8th Cir. 1984); *United States v. Tyson*, 690 F.2d 9 (1st Cir. 1982).

Neither the government at trial nor the Court of Appeals in the present case has ever suggested that altered mileage figures on Virginia titles had any effect on their validity – much less the effects that were present and justified the convictions in the cases relied upon by the Third Circuit to justify the "better rule" conclusion. Petitioner suggests that the better rule is that of *Sparrow* and its reasoning and that the present attempt to introduce a new and broader interpretation of Section 2314 should be examined by this Court.

CONCLUSION

Wherefore, petitioner respectfully prays for the foregoing reasons that the Petition for Writ be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Dennis M. Hart, certify that a true and correct copy of the foregoing Petition was served, by mail, with first class postage prepaid, upon the Office of the Solicitor General, United States Department of Justice, Washington, D.C. 20530, this 17th day of December, 1989.

Dennis M. Hart

APPENDIX A

OPINIONS BELOW

Nos. 89-5233, 89-5234, 89-5235

United States Court of Appeals
For the Third Circuit

UNITED STATES OF AMERICA

Appellee,

v.

ALVIN C. DAVIS, JR., DENNIS H. SMITH,
RAYMOND JOHN MOSKAL, SR.,

Appellants.

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Crim. Nos. 88-00150-01,
88-00150-02, 88-00150-03)

Submitted Pursuant to Rule 12(6)
September 12, 1989

Before: LUMBARD, CARDAMONE
and MAHONEY, *Circuit Judges**

---

* Hon. J. Edward Lumbard, Hon. Richard J. Cardamone, Hon. J. Daniel Mahoney, U.S. Circuit Judges for the Second Circuit, sitting by designation.

JUDGEMENT

These causes came on to be heard on the records from the United States District Court for the Middle District of Pennsylvania and were submitted pursuant to Third Circuit Rule 12(6) September 12, 1989.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgments of the said District Court, entered March 22, 1989, be, and the same are hereby affirmed. All of the above in accordance with the opinion of this Court.

ATTEST:

Clerk

October 18, 1989

Certified as a true copy and issued in lieu of a formal mandate on November 9, 1989.

Test:

Chief Deputy Clerk, United States Court of Appeals, for the Third Circuit

FOR PUBLICATION

Filed: October 18, 1989

United States Court Of Appeals
For The Third Circuit

Nos. 89-5233, 89-5234, 89-5235

UNITED STATES OF AMERICA,

Appellee,

v.

ALVIN C. DAVIS, JR., DENNIS H. SMITH,
RAYMOND JOHN MOSKAL, SR.,

Appellants.

On Appeal from the United States District
Court for the Middle District of Pennsylvania
(D.C. Crim. Nos. 88-00150-01,
88-00150-02, 88-00150-03)

Submitted Pursuant to Rule 12(6)
September 12, 1989

Before: LUMBARD, CARDAMONE and
MAHONEY, *Circuit Judges**
(Opinion filed October 18, 1989)

---

* Hon. J. Edward Lumbard, Hon. Richard J. Cardamone, Hon. J. Daniel Mahoney, U.S. Circuit Judges for the Second Circuit, sitting by designation.

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Appeal from judgments of conviction entered in the United States District court for the Middle District of Pennsylvania (Caldwell, J.) for one count of conspiracy, two counts of interstate transportation of falsely made securities and two counts of utterance of a counterfeit state security.

Judgments affirmed.

PER CURIAM

Alvin C. Davis, Jr., Dennis H. Smith and Raymond John Moskal, Sr. appeal from judgments of conviction entered March 20, 1989 for conspiracy, 18 U.S.C. § 371 (1982), to commit interstate transporta-

tion of falsely made securities, 18 U.S.C.A. § 2314 (West Supp. 1989), and to utter counterfeit state securities, 18 U.S.C. § 513 (Supp. V 1987), and for substantive counts of interstate transportation of falsely made securities, 18 U.S.C. §§ 2314 and 2 (1982), and uttering of counterfeit state securities, 18 U.S.C. §§ 513 and 2 (1982), in the Middle District of Pennsylvania (Caldwell, J.). Davis was sentenced to three years imprisonment and fined $5,000, Smith was sentenced to two years imprisonment and fined $2,500 and Moskal was sentenced to six months incarceration, followed by three years probation and 100 hours of community service. Upon designation by the Chief Justice of the United States, the members of this panel were assigned to serve as a panel of the Third Circuit Court of Appeals for purposes of determining this appeal. *See* 28 U.S.C. § 291(a) (1982). The designation was made following the recusal of the judges of the Third Circuit. Appellate jurisdiction is conferred by 18 U.S.C. § 1291 (1982).

FACTS

Appellants were convicted for conspiring with others to alter the high mileage figures on certificates of title for approximately 300 automobiles and to obtain "washed" Commonwealth of Virginia titles bearing false, low mileage figures for those automobiles. The false mileage figures corresponded with the rolled-back odometer readings found on the instrument panels of the various automobiles.

During the period of the conspiracy from December 1984 through July 1985, appellant Davis was the owner of Al Davis Enterprises, a wholesale automobile dealership located in Manheim, Pennsylvania. Appellant Moskal was Davis' office manager. Appellant Smith, along with Curman "Buddy" Dickens, was one of the principal owners and operators of Buddy's Auto Sales, a wholesale automobile dealership located in Chesapeake, Virginia.

Evidence was presented at trial that Dickens regularly received Federal Express packages containing automobile certificates of title from Al Davis Enterprises in Pennsylvania. Dickens and his wife would then apply for Virginia certificates for those automobiles in the name of their dealership, Buddy's Auto Sales, at the mileage listed on the titles, which had already been altered. A "washed" title is typically

listed in the name of someone other than the true owner and is obtained in a different state than the one that issued the high mileage title. The "washed" Virginia titles were then returned to Davis, sent either by Federal Express or personally delivered by Smith or Dickens. Davis paid Smith and Dickens a fee of $100 per title for this service. Once Davis received the now "washed" Virginia certificates, he distributed them to area dealers who had provided the titles to him, and charged these dealers a fee for the title washing service. Ultimately, the vehicles with the rolled back odometers and "washed" titles were sold to innocent third parties.

The underlying substantive counts in the indictment related to two automobiles, a 1982 Mazda and a 1984 Ford. Davis purchased the Mazda with 72,472 miles on the odometer, obtained a Pennsylvania title in his name with that mileage, and sent the title to Buddy Dickens in Virginia. A "paid" stamp had been placed on the face of the Pennsylvania title concealing the mileage figure of 72,472, and Mrs. Dickens was able to obtain a new "washed" title in the name of Buddy's Auto Sales showing mileage of 42,703 miles the figure that had been entered on the back of the Pennsylvania title. After receiving the "washed" Virginia title to the automobile, Davis executed the back of the title to make it appear as though he had purchased the car from Buddy's Auto Sales. Title to the 1984 Ford was "washed" in a similar manner through the Dickens' operation, with the exception that the mileage was altered on the Maryland title that was used to effect the sale to Davis. Davis sold both cars to one Mark Angelo, who sold the cars to another dealer, John Todak. Todak applied for Pennsylvania titles using the "washed" titles and sold the Mazda to innocent customers.

DISCUSSION

The primary issue on appeal is whether an automobile certificate of title containing false mileage and ownership information constitutes a "falsely made" security under 18 U.S.C. § 2314 (1988). The relevant portion of that statute prohibits anyone "with unlawful or fraudulent intent, transport[ing] in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered or counter-

feited...." Appellants contend that although the "washed" certificates may contain incorrect information, they are not "falsely made" because they were made and issued by the Commonwealth of Virginia and are genuine documents that contain a false statement of fact.

Some courts agree with this proposition, finding that "falsely made" relates to the genuineness of the document, and not the falsity of its contents. *See United States v. Sparrow*, 635 F.2d 794 (10th Cir. 1980), *cert denied*, 450 U.S. 1004 (1981); *United States v. Rudge*, 474 F. Supp. 360 (S.D. Iowa 1979). Other courts hold that documents validly issued containing material false information are "falsely made" for purposes of § 2314. *See United States v. Cotoia*, 785 F.2d 497 (4th Cir. 1986); *United States v. Daly*, 716 F.2d 1499 (9th Cir. 1983); *United States v. Kauffman*, 670 F. Supp. 134 (M.D. Pa. 1985), *aff'd by judgment order*, No. 85-5146 (3d Cir. Oct. 31, 1985); *see also United States v. Mitchell*, 588 F.2d 481 (5th Cir.), *cert. denied*, 442 U.S. 940 (1979).

The latter, we believe, is the better rule. Stated mileage is a material part of a title certificate. The fact that valid title is transferred by the certificate does not vitiate the fraud that is foisted on the unsuspecting customer when the falsely made document is introduced into commerce. *See Cotoia*, 785 F.2d at 501; *Daly*, 716 F.2d at 1509. We have no doubt that "the purpose of the term 'falsely made' was to... prohibit the fraudulent introduction into commerce of falsely made documents regardless of the precise method by which the introducer or his confederates effected their lack of authenticity..." *Mitchell*, 588 F.2d at 484 (quoting *United States v. Huntley*, 535 F.2d 1400, 1402 (5th Cir. 1976), *cert. denied*, 430 U.S. 929 (1977)). Further, the decision in *United States v. Kauffman*, 670 F. Supp. 134 (M.D. Pa. 1985), *aff'd by judgment order*, No. 85-5146 (3d Cir. Oct. 31, 1985), is especially persuasive in resolving this issue in the Third Circuit.

Appellants also contend that their convictions under 18 U.S.C. § 513[1] should be vacated because the state title certificate was not

[1] 18 U.S.C. § 513(a) (Supp. V 1987) provides "Whoever makes, utters or possesses a counterfeited security of a State or a political subdivision thereof or of an organization, or whoever makes, utters or possesses a forged security of a State or Political subdivision thereof or of an organization, with intent to deceive another person, organization, or government shall be fined not more than $250,000 or imprisoned for not more than 10 years, or both."

"counterfeited" as defined in the statute. Section 513 provides that "the term 'counterfeit' means a document that purports to be genuine but is not, because it has been falsely made or manufactured in its entirety." 18 U.S.C. § 513(c)(1)(1986). Such definition includes a document that has been *falsely made* in its entirety. Having decided, as a matter of law, that the "washed" certificates were "falsely made" under § 2314, there is ample evidence in the record to support the conclusion that appellants caused the Virginia title certificates to be "falsely made" in their entirety under § 513.

Appellants' final contention that the district court's instructions to the jury were inadequate is without merit. The judgments of conviction are accordingly affirmed.

Please file the enclosed opinion.

A True Copy:

Teste:

Clerk of the United States Court of Appeals
for the Third Circuit

APPENDIX B

STATUTES INVOLVED

§2314. Transportation of stolen goods, securities, moneys, fraudulent State tax stamps, or articles used in counterfeiting.

Whoever transports, transmits, or transfers in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of $5,000 or more, knowing the same to have been stolen, converted or taken by fraud; or

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transports or causes to be transported, or induces any person or persons to travel in, or to be transported in interstate commerce in the execution or concealment of a scheme or artifice to defraud that person or those persons of money or property having a value or $5,000 or more; or

[Second through sixth paras. unchanged]

This section shall not apply to any falsely made, forged, altered, counterfeited or spurious representation of an obligation or other security of the United States, or of an obligation, bond, certificate, security, treasury note, bill, promise to pay or bank note issued by any foreign government. This section also shall not apply to any falsely made, forged, altered, counterfeited, or spurious representation of any bank note or bill issued by a bank or corporation of any foreign country which is intended by the laws or usage of such country to circulate as money.

(As amended Nov. 18, 1988, P.L. 100-690, Title VII, Subtitle B, §§ 7057, 7080, 102 Stat. 4402, 4406.)

§371. Conspiracy to commit offense or to defraud United States

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

(June 25, 1948, ch 645, § 1, 62 Stat. 701.)

§513. Securities of the States and private entities

(a) Whoever makes, utters or possesses a counterfeited security of a state or political subdivision thereof or of an organization, or whoever makes, utters or possesses a forged security of a State or political subdivision thereof of an organization, with intent to deceive another person, organization, or government shall be fined not more that $250,000 or imprisoned for not more than 10 years, or both.

(b) Whoever makes, receives, possesses, sells or otherwise transfers an implement designed for or particularly suited for making a counterfeit or forged security with the intent that it be so used shall be punished by a fine of not more than $250,000 or imprisoned for not more than 10 years, or both.

(c) For purposes of this section –

(1) the term "counterfeited" means a document that purports to be genuine but is not, because it has been falsely made or manufactured in its entirety;

(2) the term "forged" means a document that purports to be genuine but is not because it has been falsely altered, completed, signed, or endorsed, or contains a false addition thereto or insertion therein, or is a combination of parts of two or more genuine documents;

(3) the term "security" means-

(A) a note, stock certificate, treasury stock certificate, bond, treasury bond, debenture, certificate of deposit, interest coupon, bill, check, draft, warrant, debit instrument as defined in section 916(c) of the Electronic Fund Transfer Act (15 U.S.C. 1693(c) [15 USCS § 1693(c)], money order, traveler's check, letter of credit, warehouse receipt, negotiable bill of lading, evidence of indebtedness, certificate of interest in or participation in any profit-sharing agreement collateral-trust certificate, pre-reorganization certificate of subscription, transferable share, investment contract, voting trust certificate, or certificate of interest in tangible or intangible property;

(B) an instrument evidencing ownership of goods, wares, or merchandise;

(C) any other written instrument commonly known as a security;

(D) a certificate of interest in, certificate of participation in, certificate for, receipt for, or warrant or option or other right to subscribe to or purchase, any of the foregoing; or

(E) a blank form of any of the foregoing;

(4) the term "organization" means a legal entity, other than a government, established or organized for any purpose, and includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, society, union, or any other association or person which operates in or the activities of which affect interstate or foreign commerce; and

(5) the term "State" includes a State of tne United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, and any other territory or possession of the United States.

(Added Oct. 12, 1984, P. L. 98-473, Title II, Ch XI, Part D, § 1105(a), 98 Stat. 2144; Nov.10, 1986, P. L. 99-646, § 31(a), 100 Stat. 3598.)

Supreme Court, U.S.
FILED
FEB 16 1990
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-964

In the Supreme Court of the United States

OCTOBER TERM, 1989

RAYMOND J. MOSKAL, SR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES

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EDWARD S.G. DENNIS, JR.
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QUESTION PRESENTED

Whether 18 U.S.C. 2314, which prohibits the transportation in interstate commerce of instruments that are "falsely made," covers petitioner's conduct in obtaining automobile certificates of title that contain false mileage information.

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18 U.S.C. 513 ..... 2, 3, 4
18 U.S.C. 2311 ..... 3, 4
18 U.S.C. 2314 ..... 2, 3, 4, 5, 6

In the Supreme Court of the United States

OCTOBER TERM, 1989

No. 89-964

RAYMOND J. MOSKAL, SR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the court of appeals (Pet. App. 3a-8a) is reported at 888 F.2d 283.

JURISDICTION

The judgment of the court of appeals (Pet. App. 1a-2a) was entered on October 18, 1989. The petition for a writ of certiorari was filed on December 16, 1989. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

After a jury trial in the United States District Court for the Middle District of Pennsylvania, petitioner was convicted on two counts of interstate transportation of falsely

made securities, 18 U.S.C. 2314, two counts of uttering counterfeit state securities, 18 U.S.C. 513, and conspiracy to violate those statutes, 18 U.S.C. 371.[1] He was sentenced to: six months' imprisonment on the conspiracy count and concurrent terms of two years' imprisonment on the remaining counts, but those concurrent sentences were suspended. Petitioner also was placed on three years' probation and required to perform 100 hours of community service. The court of appeals affirmed. Pet. App. 3a-8a. [2]

1. The evidence at trial showed that between December 1984 and July 1985 petitioner conspired with co-defendants Alvin Davis, Jr., and Dennis Smith, as well as co-conspirators Curman "Buddy" Dickens and Judy Dickens to obtain "washed" Virginia certificates of title that bore false, low-mileage figures. Petitioner was the office manager for co-defendant Davis, who owned a wholesale auto dealership in Manheim, Pennsylvania. Pet. App. 5a. Smith and "Buddy" Dickens owned and operated Buddy's Auto Sales, a wholesale auto dealership in Virginia. Persons at Davis's dealership regularly sent packages of automobile certificates of title to Buddy's Auto Sales. Dickens and his wife then applied for Virginia title certificates for those cars in the name of their dealership. The mileage figures on the old titles had already been altered when the titles were sent from Davis's dealership. *Ibid.* After obtaining the new titles, Dickens and Smith sent them to Davis in Pennsylvania. Dickens and Smith charged a fee of $100 per title. Davis

[1] Co-defendants Alvin Davis, Jr., and Dennis Smith were tried and convicted with petitioner. The court of appeals affirmed their convictions in the same opinion that disposed of petitioner's claims.

[2] The judges on the Third Circuit recused themselves from hearing this case. As a result, the Chief Justice appointed three judges from the Second Circuit to sit by designation in the Third Circuit. See Pet. App. 5a.

then distributed the "washed" titles to area dealers who had provided the original titles to him. Davis charged those dealers a fee for his title "washing" service. Ultimately, the dealers sold the vehicles with rolled-back odometers and washed titles to unsuspecting customers. *Id.* at 6a.

2. Petitioner argued at trial that the prohibition in 18 U.S.C. 2314 against transporting a "falsely made" security applies only to documents that are not themselves genuine – *i.e.*, documents that are not what they purport to be.[3] He conceded that the washed titles might have contained false information, but he argued that because the titles themselves were issued by the appropriate Virginia officials, he could not be convicted under Section 2314. The trial court rejected that claim, and petitioner was found guilty.

3. The court of appeals affirmed. Pet. App. 3a-8a. The court of appeals noted that the Tenth Circuit had held that the term "falsely made" relates to the genuineness of the document, not the falsity of its contents. See *United States* v. *Sparrow*, 635 F.2d 794 (10th Cir. 1980) (en banc), cert. denied, 450 U.S. 1004 (1981). The court held, however, that more recent cases holding to the contrary were better reasoned because important information on a title certificate, such as mileage, is a material part of the certificate. Accordingly, in order to prevent fraudulent documents from being introduced into interstate commerce, the court joined the majority view on the meaning of the term "falsely made" in 18 U.S.C. 2314. Pet. App. 7a.[4]

[3] Section 2314 provides, in pertinent part:

> Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered, or counterfeited; * * * [shall be guilty of a crime].

[4] The court also rejected petitioner's attack on his Section 513 conviction. Petitioner argued that the titles here did not meet the statutory

ARGUMENT

Petitioner contends (Pet. 3-5) that Section 2314 does not reach his conduct because the term "falsely made" in Section 2314 does not apply to documents that contain false information if such documents are genuinely executed and otherwise valid. The court of appeals correctly rejected that argument. Nevertheless, although the issue is not one of surpassing importance, it has arisen from time to time and has closely divided the nine circuits that have addressed it. Because it would be useful to have that circuit split resolved, we do not oppose the petition for a writ of certiorari.

1. Section 2314 applies to instruments that are "falsely made, forged, altered, or counterfeited."[5] By its plain terms, therefore, the statute reaches the false certificates of title in this case. Those titles were "falsely made" because petitioner and his co-conspirators provided Virginia officials with false information before they issued the certificates. The false information was then incorporated into the certificates of title. This plain-meaning interpretation of the statute is wholly consistent with the "broad purpose" of Section 2314 to prevent fraud. *McElroy* v. *United States*, 455 U.S. 642, 655 (1982). As the Ninth Circuit observed in *United States* v. *Daly*, 716 F.2d 1499, 1509 (1983), cert. dismissed, 465 U.S. 1075 (1984), Congress did not "intend[ ]

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definition of "counterfeited," which is defined as "a document that purports to be genuine but is not, because it has been falsely made or manufactured in its entirety." Relying on its holding that the title certificates were "falsely made" under Section 2314, the court below also held that the Virginia title certificates were "falsely made" within the meaning of Section 513. Pet. App. 7a-8a. Petitioner does not challenge his Section 513 convictions in his petition.

[5] Section 2314 applies to "securities," which are defined to include an "instrument or document or writing evidencing ownership of goods." 18 U.S.C. 2311. Thus, there is no doubt that the certificates of title in this case are "securities."

to exempt clever schemes that induce state participation in the creation of fraudulent documents from the scope of section[ ] 2314."

2. Petitioner does not rely on the language or purpose of Section 2314. Instead, he relies exclusively on the Tenth Circuit's decision in *United States* v. *Sparrow*, *supra*, which also involved a false automobile title certificate. In that case, the defendant misrepresented the true ownership of the car. 635 F.2d at 795. The Tenth Circuit, relying on its earlier decision in *Marteney* v. *United States*, 216 F.2d 760 (1954), held that the term "falsely made" was equivalent to forgery in that it referred to "genuineness of execution not falsity of content." 635 F.2d at 796.[6]

Three other circuits, in cases from some years ago, have indicated that they agree with the view that the phrase "falsely made" does not include documents that contain false information but were genuinely executed. In *Melvin* v. *United States*, 316 F.2d 647 (7th Cir. 1963), the Seventh Circuit vacated a conviction where the defendant created and signed a bogus check. The court concluded that "to establish a violation of § 2314 the falsity must affect the making of the security and not merely misrepresentations of fact contained therein." 316 F.2d at 648. The Eighth Circuit had previously agreed with that position in *Martyn* v. *United States*, 176 F.2d 609 (1949). And the Second Circuit in *United States* v. *Brown*, 246 F.2d 541, 542 (1957), noted in dicta that "[t]he phrase 'falsely made' as used in the statute

---

[6] The *Sparrow* court also held that, under Section 2314, the government had to show that the security was forged prior to its transportation in interstate commerce. 635 F.2d at 796. This Court's decision in *McElroy* v. *United States*, *supra*, rejected the interstate-commerce holding of *Sparrow*.

relates to the execution of * * * a security rather than to whether its content be true or false."[7]

In more recent cases, five circuits have disagreed with petitioner's interpretation of the phrase "falsely made" in Section 2314. In addition to the Third Circuit in this case,[8] the Fourth, Fifth, Sixth, and Ninth Circuits have held that Section 2314 reaches instruments that "contain[ ] material false information." *United States* v. *Cotoia*, 785 F.2d 497, 498 (4th Cir. 1986) (validly issued certificates of title were "falsely made" because they contained false odometer readings). See *United States* v. *Daly*, 716 F.2d 1499 (9th Cir. 1983), (certificates of title were "falsely made" where state officials recorded false information on genuine title forms), cert. dismissed, 465 U.S. 1075 (1984); *United States* v. *Mitchell*, 588 F.2d 481, 484 (5th Cir.) (certificate of deposit was "falsely made" where defendant used fictitious date), cert. denied, 442 U.S. 940 (1979); *United States* v. *Huntley*, 535 F.2d 1400, 1402 (5th Cir. 1976) (check was "falsely made" where defendent used spurious name on check), cert. denied, 430 U.S. 929 (1977); *United States* v. *Tucker*, 473 F.2d 1290, 1294 (6th Cir.) (sight draft executed in name of fictitious person was "falsely made"), cert. denied, 412 U.S. 942 (1973).

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[7] Petitioner incorrectly contends (Pet. 5) that *United States* v. *Massa*, 740 F.2d 629 (8th Cir. 1984), cert. denied, 471 U.S. 1115 (1985), and *United States* v. *Tyson*, 690 F.2d 9 (1st Cir. 1982), support his position. In those cases, the securities were completely valid and truthful. The courts held that Section 2314 does not reach such a valid security simply because the defendant forged an endorsement.

[8] Although the panel that decided this case for the Third Circuit contained no Third Circuit judges, the position adopted by the court is consistent with a prior, unpublished decision of the Third Circuit. See *United States* v. *Kauffman*, 670 F. Supp. 134 (M.D. Pa.), aff'd, 782 F.2d 1032 (3d Cir. 1985) (Table) (affirming a conviction under Section 2314 for obtaining automobile certificates of title that contained false mileage statements).

The issue presented by this case arises often enough that, in view of the sharp split among the circuits, resolution of the question presented here would promote the fair and efficient operation of the federal criminal justice system. Accordingly, we do not oppose this Court's review on the merits.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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In The

Supreme Court of the United States

October Term 1989

RAYMOND J. MOSKAL

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

On A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

JOINT APPENDIX

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CR 88-00150-03

U.S. vs. MOSKAL, Raymond John Sr.

U.S. TITLE/ SECTION	OFFENSES CHARGED
18:371	Conspiracy to utter/possess or cause to be uttered or possessed a counterfeited or fporged security and interstate transportation of falsely made securities (In Re: 18:513, 2314 & 2) Count 1
18:2314 & 2	Interstate transportation of stolen/forged securities and aid & abet Counts 2 & 4
18:513 & 2	Utter, possess and cause to be uttered and possessed a counterfeit or forged security and aid & abet Counts 3 & 5

DATE 1988	DOCUMENT NO.	V. PROCEEDINGS
Sept. 13	1	**INDICTMENT** – 5 Counts.cc: Crt; USA; USM; Prob; Deft via USM
Oct. 25	4	MIN SHT – of R/5. Deft present w/o cnsl. Govt. recommends ROR w/app. bnd. Mag. sets bail at $10,000 unsec. w/app. bnd. Deft executes bail papers & ordered released after USM processing.
Oct. 25	5	ORDER – setting cond. of release. Deft to appear when/where directed. Deft to execute an unsec. bnd in amt of $10,000. Deft ordered released after USM processing. Deft executes same. cc: Ct; USM; USA; Prob; Deft; DEf Cnsl.

Nov. 10	12	MIN SHT NOT GUILTY – of Arr. Deft present w/cnsl. Deft enters plea of to the Indictmt. J/sel & trial set for 1/9/89, 9:30 - a.m. Bail Cont'd. M. Zamiska, Ct Rptr
1989		
January 9	20	MIN/ST – of 1st day to Jury selection/ jury trial; Deft present w/counsel: Jury selected & sworn. Trial begins.
January 9	21	RECORD – of Jury Panel. Jurors challenged and selected.
January 10	22	MIN/ST – of 2nd day of jury trial: deft present w/counsel: Govt Cont'.
January 11	23	MIN/ST – of 3rd day of jury trial. Govt rests. Deft moves for jdmt. of acquittal & denied by Ct. Defts rest their case without presenting testimony. closing arguments made.
January 12	24	MIN/ST – of 4th day of jury trial: Court charges the jury as to the law. Jury returns verdict at 3:10 p.m. of guilty on all counts. Court advises defts as to the right to file post trial motions within 7 days. PSI ordered. Govt recommends the defts have random drug testing. The Ct. directs the govt to file mot regarding amendment to bail conditions. Bail in all respects is continued. Sent set for 3/3/89. Time to be set later.
January 12	26	VERDICT – We the jury find the deft Raymond J. Moskal Guilty on Count 1, Guilty on Count 2, Guilty on Count 3, Guilty on Count 4 and Guilty on Count 5.

Mar 20	33	– VOLUNTARY SURRENDER FOR SERVICE OF IMPR-Deft to surrender himself to AG on 4/24/89 at 1:00 p.m. (CALD) Orig-Sec. Copies to AUSA Daniel, Prob., Marshal, deft, crt.
Mar 22	34	– JDMT – (JUDGE CALDWELL SIGNED ON 3/20/89) – CTS 1,2,3,4,5 guilty verdict. CT 1 deft committed CAG or authorized rep impr (6) months. CT 2 committed CAG impr (2) years. Execution of that sent as to impr only is suspended & deft placed prob (3) years to commence upon release from confinement in CT 1. Deft to conduct himself as a law-abiding, industrious citizen complying with all special & general conditions of prob as prescribed by crt & as a special condition we direct deft perform 100 hours of community service work as directed by prob ofcr. Considering deft's financial condition & the prospects that he has we decline to order restitution. Further direct on CTS 3,4,5 sent same as that imposed in CT 2 & run concurrent with sent imposed in CT 2. No addl community service work however shall be required on thses (3) cts. Voluntary surrender date – 4/24/89. Purs to 18:3013 total $250.00 special assessment. $50.00 on CTS 1,2,3,4,5. to be paid w/in (10) days thru Clerk, Hbg. Crt orders commitment as a county jail reasonably near deft's residence as place of confinement & he be permitted to participate in Work Release Program of that Institution. (CALD) Orig-Sec. Copies to Daniel, Prob., Marshal, Moskal, Hart, Fine & Enforcement, Financial from Hbg.

March 20	35	– NOT/APPEAL – filed by deft order of D.C. entered on 3/20/89 to USCA. Cert copy of Not/Appeal, order being appealed, docket entries w/TL #1 to USCA. Cert copy of Not/Appeal w/TL #1 to Judge Caldwell, Daniel, Hart, deft, Marshal, Prob., Moncia Zamiska, Maria.

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	)	Criminal No.
	)	CR 88-00150-03
v.	)	
	)	
ALVIN C. DAVIS, JR.,	)	(Filed
DENNIS H. SMITH, and	)	Sept. 13, 1988)
RAYMOND JOHN MOSKAL, JR.	)	

INDICTMENT

THE GRAND JURY CHARGES:

COUNT I

Between December of 1984 and July of 1985, in the Middle District of Pennsylvania and elsewhere, the defendants,

ALVIN C. DAVIS, JR.,
DENNIS H. SMITH, and
RAYMOND JOHN MOSKAL, JR.

did conspire, unlawfully agree, combine and confederate with Curman Burl Dickens (hereinafter referred to as Buddy Dickens), Judy Lynn Dickens, Mark Angelo, Debra L. Blatz, John W. Blatz, and others known and unknown, to commit offenses against the United States, to wit; Counterfeit Securities of the States, Title 18, United States Code, Section 513, and Transportation of Fraudulent Securities, Title 18, United States Code, Section 2314, by altering odometer mileage figures on certificates of title for approximately 300 automobiles, by applying for and receiving new

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Donald R. Berry, Clerk

Per /s/ Cheryl M. GilChrist
Deputy Clerk

"washed" Commonwealth of Virginia titles containing false, low odometer mileage figures for those automobiles, and by selling the vehicles with the new "washed" Virginia titles to third parties.

A. Introduction and Background

1. At all times material and pertinent to this Indictment, Buddy Dickens and Judy Lynn Dickens were residents of Portsmouth, Virginia. Buddy Dickens and DENNIS H. SMITH were the principle owner/operators of Buddy's Auto Sales, Chesapeake, Virginia, a wholesale car dealership licensed by the Commonwealth of Virginia.

2. At all times material and pertinent to this Indictment, ALVIN C. DAVIS, JR. was the owner/operator of Al Davis Enterprises, Incorporated, Manheim, Pennsylvania. Al Davis Enterprises was a wholesale car dealership licensed by the Commonwealth of Pennsylvania which did extensive business at the Manheim Auto Auction in Manheim, Pennsylvania.

3. At all times material and pertinent to this Indictment, RAYMOND JOHN MOSKAL, JR. was employed by Al Davis Enterprises, Incorporated, primarily functioning as its office manager/bookkeeper. As such, MOSKAL reported directly to ALVIN C. DAVIS, JR.

4. At all times material and pertinent to this Indictment, Mark David Angelo was a wholesale automobile dealer licensed by the State of New York under the name

of Performance Cars, Grand Island, New York. Like DAVIS, Angelo purchased and sold substantial numbers of automobiles at the Manheim Auto Auction, Manheim, Pennsylvania.

5. At all times material and pertinent to this Indictment, John W. Blatz and his wife, Debra L. Blatz, were residents of Lancaster County, Pennsylvania, who, in the early part of 1985, established DLB Business Consultants. The primary business of DLB Business Consultants was the preparation and processing of title applications for various wholesale and retail automobile dealers in New York, Pennsylvania, New Jersey, Maryland, Virginia, and the District of Columbia.

B. Objectives of the Conspiracy

6. The objectives of the conspirators were to purchase high-mileage motor vehicles, roll-back or "clock" the vehicles' odometers to substantially reduce their apparent mileage, to forge, alter, or otherwise falsify the odometer mileage figures appearing on the certificates of title pertaining to the rolled-back vehicles, to obtain new "clean", "laundered" or "washed" certificates of title for said rolled-back vehicles reflecting the false, low mileage, and to employ the new "washed" titles in subsequent sales of the rolled-back vehicles to third parties.

C. Overt Acts

The co-conspirators performed the following overt acts in furtherance of said conspiracy:

7. In approximately December 1984, DENNIS H. SMITH met with Buddy Dickens and Judy Lynn Dickens in Virginia and discussed their willingness to "wash" titles for certain Pennsylvania car dealers by applying for and obtaining new titles from the Commonwealth of Virginia under the name of Buddy's Auto Sales.

8. Thereafter, in approximately early January 1985, after consulting with SMITH, ALVIN C. DAVIS, JR. telephoned Buddy Dickens in Virginia, advising he was willing to pay Dickens $100 per title for his title laundering services. Dickens agreed and DAVIS advised he would be forwarding titles to him in Virginia via Federal Express. DAVIS explained that many of the titles to be "washed" would come from other dealers who would pay a fee to DAVIS for this service.

9. As a result, between January 14, 1985 and June 8, 1985, 37 Federal Express packages were sent to Buddy Dickens in Virginia from Al Davis Enterprises. Two other Federal Express packages were also sent to DENNIS H. SMITH in Virginia. These packages contained approximately 300 automobile titles with altered odometer figures.

10. Upon receipt of the packages, Judy Lynn Dickens prepared Commonwealth of Virginia title applications for the vehicles, listing the low, false odometer mileage appearing on the altered titles.

11. Judy Lynn Dickens submitted the title applications and supporting documents to offices of the Virginia Division of Motor Vehicles under the name of Buddy Auto Sales. Upon receipt of the new "washed" Virginia titles (usually for same day of submission), the titles were

returned to ALVIN C. DAVIS, JR. in Manheim via Federal Express or by personal delivery. On other occasions, new Virginia titles were forwarded directly to other individuals, including Mark Angelo, upon AL DAVIS' instructions.

12. Prior to returning the new "washed" Virginia titles to DAVIS, Judy Lynn Dickens maintained a handwritten log reflecting, among other information, the title number, the vehicle identification number (VIN), and the date each title was received from DAVIS. This log also contained the new Virginia title number, the low, false odometer mileage appearing on the Virginia title, and the date the new title was returned to DAVIS or otherwise delivered.

13. In return for these services, ALVIN C. DAVIS, JR. issued 17 checks drawn upon an account of Al Davis Enterprises, Inc. payable to Buddy Dickens between January and June 1985. These 17 checks totalled $22,421. Between February and April 1985, 12 checks were also drawn upon the Al Davis Enterprises' account, payable to DENNIS H. SMITH. These 12 checks totalled $7,9065. These monies were divided between SMITH and Buddy Dickens on a 50-50 basis.

14. On numerous occasions, DENNIS H. SMITH, Buddy Dickens and Judy Lynn Dickens traveled to Manheim, Pennsylvania to meet with ALVIN C. DAVIS, JR. and RAYMOND JOHN MOSKAL, JR. During these visits, numerous conversations were had with respect to the title wash scheme. Altered and "washed" titles were also exchanged and delivered.

15. On numerous occasions, Mark Angelo delivered altered automobile titles to ALVIN C. DAVIS, JR. for "laundering" through Buddy and Judy Lynn Dickens. DAVIS charged Angelo $150 per title for this service. On occasion, Angelo received the "washed" Virginia titles from DAVIS, on other occasions he received them directly from the Dickens in New York via Federal Express.

16. During the time period encompassed by the conspiracy, Debra Blatz delivered approximately 100 altered titles to RAYMOND JOHN MOSKAL, JR. for submission to the Dickens in Virginia. These titles were provided to Debra Blatz by various customers of DLB Business Consultants. For this laundering service, DAVIS charged John and Debra Blatz $100 per title. The Baltzes, in turn, charged their customers $125-150 per title.

17. Like Judy Lynn Dickens, Debra Blatz also maintained written records of these transactions. The "washed" Virginia titles were usually delivered to Debra Blatz by RAYMOND JOHN MOSKAL, JR.

18. After the rolled-back vehicles were sold to third parties, some of the Virginia titles were subsequently submitted to the Pennsylvania Bureau of Motor Vehicles in Harrisburg, Pennsylvania in connection with applications for new Pennsylvania titles. On these occasions, the false odometer mileage figures appearing on the "washed" Virginia titles were transferred to the new Pennsylvania titles.

19. The allegations set forth in Counts II through V of this Indictment are also hereby specifically incorporated herein as additional overt acts committed by the co-conspirator's in furtherance of said conspiracy.

All in violation of Title 18, United States Code, Section 371.

THE GRAND JURY FURTHER CHARGES:

For purposes of Counts II through V of this Indictment, the Grand Jury hereby specifically incorporates Count I by reference, as though fully set forth herein.

COUNT II

Between on or about March 11, 1985 and on or about March 29, 1985, in the Middle District of Pennsylvania and elsewhere, the defendants,

ALVIN C. DAVIS, JR.,
DENNIS H. SMITH, and
RAYMOND JOHN MOSKAL, JR.

did, with unlawful and fraudulent intent, transport and cause to be transported in interstate commerce from Virginia to the Pennsylvania Bureau of Motor Vehicles in Harrisburg, Pennsylvania, a falsely made, forged and altered security, to wit; a Commonwealth of Virginia Certificate of Title No. 34512156 for a 1984 Ford bearing vehicle identification number 2FABP23R3EB182833, knowing said title to have been falsely made, forged and altered, in that said title bore a false odometer figure of 18,174 miles when, in fact, the true mileage was at least 52,000 miles, and did aid and abet same.

All in violation of Title 18, United States Code, Sections 2314 and 2.

THE GRAND JURY FURTHER CHARGES:

COUNT III

On or about March 29, 1985, in the Middle District of Pennsylvania and elsewhere, the defendants,

ALVIN C. DAVIS, JR.,
DENNIS H. SMITH, and
RAYMOND JOHN MOSKAL, JR.

did, knowingly and willfully, utter, possess and cause to be uttered and possessed, a counterfeit and forged security of a State, to wit; a Commonwealth of Virginia Certificate of title No. 34512156 for a 1984 Ford bearing vehicle identification number 2FABP23R3EB182833, at the Pennsylvania Bureau of Motor Vehicles, Harrisburg, Pennsylvania, in that said title bore a false odometer figure of 18,174 miles when, in fact, the true mileage was at least 52,000 miles, with the intent to deceive another person, organization and government, and did aid and abet same.

All in violation of Title 18, United States Code, Sections 513 and 2.

THE GRAND JURY FURTHER CHARGES:

COUNT IV

Between on or about March 21, 1985 and on or about April 2, 1985, in the Middle District of Pennsylvania and elsewhere, the defendants,

ALVIN C. DAVIS, JR.,
DENNIS H. SMITH, and
RAYMOND JOHN MOSKAL, JR.

did, with unlawful and fraudulent intent, transport and caused to be transported in interstate commerce from

Virginia to the Pennsylvania Bureau of Motor Vehicles in Harrisburg, Pennsylvania, a falsely made, forged and altered security, to wit; a Commonwealth of Virginia Certificate of Title No. 34732332 for a 1982 Mazda bearing vehicle identification number JH1GB2215C0616873, knowing said title to have been falsely made, forged and altered, in that said title bore a false odometer mileage figure of 42,703 miles when, in fact, the true odometer mileage was at lease 72,000 miles, and did aid and abet same.

All in violations of Title 18, United States Code, Sections 2314 and 2.

THE GRAND JURY FURTHER CHARGES:

COUNT V

On or about April 2, 1985, in the Middle District of Pennsylvania and elsewhere, the defendants,

ALVIN C. DAVIS, JR.,
DENNIS H. SMITH, and
RAYMOND JOHN MOSKAL, JR.

did, knowingly and willfully, utter, possess and cause to be uttered and possessed, a counterfeit and forged security of a State, to wit; a Commonwealth of Virginia Certificate of Title No. 34732332 for a 1982 Mazda bearing vehicle identification number JH1GB2215C0616873, at the Pennsylvania Bureau of Motor Vehicles, Harrisburg, Pennsylvania, in that said title bore a false odometer mileage figure of 42,703 miles, when, in fact, the true mileage was at least 72,000, with the intent to deceive another person, organization and government, and did aid and abet same.

All in violation of Title 18, United States Code, Sections 513 and 2.

/s/ Joseph W. Fry
FOREPERSON

September 13, 1988
DATE

/s/ James J. West
JAMES J. WEST
United States Attorney

(p. 489) As to the substantive offenses charged in the (p. 490) indictment the indictment charges each defendant with two counts of causing or aiding and abetting the interstate transportation of a falsely made, forged and altered security in violation of federal law. That section provides that whoever with unlawful or fraudulent intent transports in interstate commerce any falsely made, forged or altered security knowing the same to have been falsely made, forged or altered is guilty of an offense.

In order to establish the offense of interstate transportation of falsely made, forged or altered securities the government must prove beyond a reasonable doubt: 1. That the security described in the indictment was falsely made, forged or altered; 2. That the defendant whom you are considering transported or caused or aided or abetted the transporation of that security in interstate commerce; 3. That each defendant whom you are considering knew the security was falsely made, forged or altered and that each defendant acted with a fraudulent intent.

I instruct you as a matter of law that the certificates of title for the two vehicles named in the indictment are securities for the purpose of this statute.

I further instruct you that under the law an automobile title which contains a false or altered mileage figure on it is a falsely made or altered security.

If you find that the securities in question were (p. 491) falsely made, then you must determine whether the defendants transported the securities in interstate commerce or caused them to be transported or aided and abetted their transportation. That is, you must determine

whether because of the defendants' actions the securities were transported from one state to another.

The defendants need not have intended or known or the securities transport in interstate commerce nor is it required that the defendants actually have physically transported the securities across state lines. The government satisfies its burden of proving transportation in interstate commerce if it proves beyond a reasonable doubt that the defendants knowingly and willfully caused the securities transport across state lines or performed a substantial step in furtherance of their journey.

In addition you must consider whether the defendants or any one of them acted with a fraudulent or unlawful intent.

To act with a fraudulent or unlawful intent means simply that the defendant acted with an evil motive. That his purpose was to intentionally and deliberately violate the law.

The indictment also charges each defendant with two counts of making, uttering and possessing or causing to be made, uttered and possessed counterfeited and forged securities of a state with intent to deceive another person (p. 492) in violation of the law.

The law provides that whoever makes, utters or possesses a counterfeited security of a state or a forged security of a state with intent to deceive another person shall be guilty of an offense.

In order to establish this offense the government must prove beyond a reasonable doubt that the state securities described in the indictment were forged or

counterfeited; that the defendant or any of them made, uttered or possessed the certificate or caused or aided or abetted the same; that the defendant you are considering knew the state securities were forged or counterfeited and that the utterance, possession of that security was intended to deceive another person.

I instruct you again as a matter of law that the certificates of title for the vehicles names in the indictment are securities for the purposes of this statute.

I further instruct you under the law that an automobile title which contains false mileage information on it is a counterfeited security under the law.

If you find that the car titles in question were forged or counterfeited, then you must determine whether the defendants or any of them made, uttered or possessed the title in question. If you find that a defendant did, then you must determine whether or not that defendant knew that the (p. 493) car titles were forged or counterfeited and whether he acted intending to deceive another person.

You will note that the indictment charges that the offenses were committed on or about certain dates. The proof need not establish with certainty the exact date of the alleged offenses. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged.

Each defendant is charged in conspiracy and two counts of what are known as substantive crimes under the law. The substantives crimes, as I have just outlined,

are the making, uttering and possessing of countfeited or forged state securities and causing the interstate transporation of those securities.

You will have to decide if any defendant personally committed a substantive offense, and you may also find a conspirator guilty of a substantive crime charged against him even though he did not personally participate in the acts constituting the substantive crime or did not have actual knowledge of it.

* * *

(p. 497) THE COURT: I want the record to show that I reviewed at side bar a few objections that all of the (p. 498) defendants wished to put on the record through Mr. Garber. Mr. Garber

MR. GARBER: Your Honor, regarding the substantive counts of which the Court instructed, 2314 and 513, the terms forged and falsely made and counterfeited have specific legal definitions; and we felt that the Court – that the jury should have been instructed as to what those terms mean, specifically counterfeited as defined as a document that is purported to be genuine but is not because it has been falsely made or manufactured in its entirety. And our contention was that the Virginia, Commonwealth of Virginia, titles were not counterfeit documents and that the jury should have been – we argued that, and the jury should have been given the definition so that they could independently come to the conclusion as to whether or not the documents were counterfeited.

THE COURT: Okay. Well, we discussed that and your objection is noted.

MR. GARBER: The other objection we have is that the term forged or falsely made should have been defined to the jury; and within the legal definition in this particular case that forged is a document that purports to be genuine but is not because it has been falsely altered, completed, signed or endorsed or contains a false addition thereto or insertion thereon or a combination of the parts.

(p. 499) THE COURT: Okay. I made the same ruling on that.

MR. GARBER: And our contention was that the Virginia titles, as we argued, was not and that the jury should have considered the evidence in light of the definition. So we do object to that.

We also object to the Court telling the jury that a title containing a false mileage, odometer mileage, is as a matter of law a false or forged document. We believe that the jury must make that determination.

THE COURT: Okay.

MR. GARBER: And we contend it's not a matter of law and we cited case authority at the time we argued our motion. So those are the exceptions to the substantive counts.

THE COURT: All right. They are filed by all defendants very well.

* * *

UNITED STATES DISTRICT COURT
Middle DISTRICT OF Pennsylvania

UNITED STATES OF AMERICA

v.

Raymond John Moskal, Sr.
51 Maple Village, Box 432
Jessup, MD 20794

JUDGMENT IN A CRIMINAL CASE
(Filed March 20, 1989)
Case Number:
CR 88-00150-03

(Name and Address of Defendant)

Dennis Hart, Esquire
Attorney for Defendant

THE DEFENDANT ENTERED A PLEA OF:

([ ] guilty [ ] nolo contendere) as to count(s) _____, and
[ ] not guilty as to count(s) _____.

THERE WAS A:
([ ] finding [X] verdict) of not guilty as to count(s) 1, 2, 3, 4, 5 .

THERE WAS A:
([ ] finding [ ] verdict) of not guilty as to count(s) _____.

[ ] judgment of acquittal as to count(s) _____.

The Defendant is acquitted and discharged as to this/these count(s).

THE DEFENDANT IS CONVICTED OF THE OFFENSE (S) OF:

18:371	Conspiracy to utter/possess or cause to be uttered or possessed a counterfeited or forged security and interstate transportation of falsely made securities (In Re: 18:513, 2314 & 2)	Count 1
18:2314 & 2	Interstate transportation of stolen/forged securities and aid & abet	Cts. 2. 4

18:513 & 2	Utter, possess and cause to be uttered and possessed a counterfeit or forged security and aid & abet	Cts. 3, 5

IT IS THE JUDGMENT OF THIS COURT THAT: on Count 1 we direct that Mr. Moskal be committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of 6 months. On count 2 we direct that he be committed to the custody of the Attorney General for a term of imprisonment of 2 years. The execution of that sentence as to imprisonment only, however, is suspended and we place Mr. Moskal on probation for a period of 3 years to commence upon his release from confinement in count 1. We also direct that he conduct himself as a law-abiding, industrious citizen complying with all special and general conditions of probation as prescribed by the court, and as a special condition we direct that he perform 100 hours of community service work as directed by the probation officer. Considering Mr. Moskal's financial circumstances and the prospects that he has we decline in this case to order restitution. We further direct on counts 3, 4 and 5 that the sentence be the same as that imposed in count 2 and to run concurrently with the sentence imposed in count 2. No additional community service work, however, shall be required on these 3 counts. Voluntary surrender – April 24, 1989.

In addition to any conditions of probation imposed above, IT IS ORDERED that the conditions of probation set out on the reverse of this judgment are imposed.

CONDITIONS OF PROBATION

Where probation has been ordered the defendant shall:

(1) refrain from violation of any law (federal, state, and local) and get in touch immediately with your probation officer if arrested or questioned by a law-enforcement officer;

(2) associate only with law-abiding persons and maintain reasonable hours;

(3) work regularly at a lawful occupation and support your legal dependents, if any, to the best of your ability. (When out of work notify your probation officer at once, and consult him prior to job changes);

(4) not leave the judicial district without permission of the probation officer;

(5) notify your probation officer immediately of any changes in your place of residence;

(6) follow the probation officer's instructions and report as directed.

The court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within the maximum probation period of 5 years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

IT IS FURTHER ORDERED that the defendant shall pay a total special assessment of $250 pursuant to Title 18, U.S.C. Section 3013 for count(s) 1, 2, 3, 4, 5 as follows: $50 on each count for a total of $250 which sum shall be paid within 10 days through the Clerk of Court here in the Federal Building in Harrisburg.

IT IS FURTHER ORDERED THAT counts _____ are DISMISSED on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall pay to the United States attorney for this district any amount imposed as a fine, restitution or special assessment. The defendant shall pay to the clerk of the court any amount imposed as a cost of prosecution. Until all fines, restitution, special assessments and costs are fully paid, the defendant shall immediately notify the United States attorney for this district of any change in name and address.

IT IS FURTHER ORDERED that the clerk of the court deliver a certified copy of this judgment to the United States marshal of this district.

[X] The Court orders commitment to the custody of the Attorney General and recommends: a county jail reasonably near Mr. Moskal's residence be designated as the place of confinement and that he be permitted to participate in the Work Release Program of that institution.

3-20-89
Date of Imposition of Sentence

/s/ William W. Caldwell,
Signature of Judicial Officer

William W. Caldwell, U.S. District Judge
Name and Title of Judicial Officer

3-20-89
Date

Certified from the record
Date 3/20/89
Donald R. Berry, Clerk

By/s/ Illegible
Deputy Clerk

RETURN

I have executed this Judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____ at
Date

_____, the institution designated by the Attorney General, with a certified copy of this Judgment in a Criminal Case.

_____
United States Marshal

By _____
Deputy Marhsal

_____

Supreme Court, U.S.
FILED
NOV 2 1990
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-964

In The

Supreme Court of the United States

October Term, 1989

RAYMOND J. MOSKAL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF FOR PETITIONER

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QUESTION PRESENTED

Was the opinion of the United States Court of Appeals for the Third Circuit correct when it concluded that the broader concept of criminal liability under 18 U.S.C. 2314 was the "better rule" for judging the type of conduct for which petitioner was found guilty?

PARTIES INVOLVED

The following individuals appeared as defendants at the District Court and as appellants in the Court of Appeals: Raymond J. Moskal, Alvin C. Davis and Dennis H. Smith.

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No. 89-964

In The

Supreme Court of the United States

October Term, 1989

RAYMOND J. MOSKAL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF FOR PETITIONER

Petitioner Raymond J. Moskal respectfully requests this Court to review the judgment of the United States Court of Appeals for the Third Circuit entered on October 18, 1989, affirming his convictions for, *inter alia*, securities fraud in violation of 18 U.S.C. 2314.

OPINION BELOW

The United States Court of Appeals for the Third Circuit[1] issued an opinion on October 18, 1989, which

[1] The decision was rendered by a panel of judges assigned from the Second Circuit sitting by designation pursuant to 28 U.S.C. 291.

affirmed the petitioner's convictions in all respects. The opinion is reported at 888 F.2d 283. The opinion and judgment are reproduced in the initial petition for certiorari as Appendix A.

JURISDICTION

The opinion of the United States Court of Appeals for the Third Circuit was issued on October 18, 1989. A Petition for Writ of Certiorari was filed on December 17, 1989, and was granted on March 19, 1990. This Court has jurisdiction pursuant to 28 U.S.C. 1254(1).

STATUTES INVOLVED

Petitioner was convicted of violation of 18 U.S.C. 371, 18 U.S.C. 513, and 18 U.S.C. 2314. Jurisdiction for review by the Court of Appeals for the Third Circuit is 28 U.S.C. 1291. The substantive criminal statute for purposes of this appeal is as follows:

Sec. 2314. Transportation of stolen goods, securities, money, fraudulent State tax stamps, or articles used in counterfeiting

> Whoever transports in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of $5,000 or more, knowing the same to have been stolen, converted or taken by fraud; or
>
> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transports or causes to be transported, or induces any person to travel in, or to be transported in interstate commerce in the execution or concealment of a scheme or artifice to defraud that person of money or property having a value of $5,000 or more; or
>
> Whoever with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered or counterfeited; or
>
> Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any traveler's check bearing a forged countersignature; or
>
> Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce, any tool, implement, or thing used or fitted to be used in falsely making, forging, altering, or counterfeiting any security or tax stamps, or any part thereof –
>
> Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

STATEMENT OF THE CASE

A. Procedural History

On September 13, 1988, a five-count indictment was filed in the United States District Court for the Middle District of Pennsylvania which alleged that the petitioner and two others, Alvin C. Davis and Dennis H. Smith, conspired between themselves and others to violate 18 U.S.C. 513 (Counterfeit Securities) and 18 U.S.C. 2314

(Transportation of Fraudulent Securities) in the context of a wholesale used car dealership located in Manheim, Pennsylvania. The indictment alleged that the conspiracy took place between December 1984 and July 1985 and involved the rollback of used car odometers and the subsequent "washing" of titles through the use of title transfers in the Commonwealth of Virginia and the State of Pennsylvania. (J.A. 5-14)

On January 9, 1989, petitioner and co-defendants Smith and Davis began a four-day jury trial before the Honorable William Caldwell sitting at Harrisburg, Pennsylvania. On January 12, 1989 , the jury returned a verdict of guilty against petitioner and the co-defendants on all counts. On March 20, 1989, petitioner was sentenced to a term of six months incarceration and three years probation. (J.A. 20-24)[2]

On October 18, 1989, a panel of judges sitting by designation for the Third Circuit Court of Appeals, affirmed petitioner's convictions in all respects. A Petition for Writ of Certiorari was filed on December 17, 1989, which sought review of the question of whether the government's theory of liability under 18 U.S.C. 2314 was correct as affirmed by the Third Circuit. The Writ of Certiorari was granted on March 19, 1990.

B. Facts

The conspiracy count (Count 1) alleged that high mileage used cars were bought by the defendants and

[2] Co-defendant Smith was sentenced to a term of 2 years incarceration and a $2,500 fine. Mr. Davis was sentenced to 3 years and a $5,000 fine.

other wholesale dealers for the purposes of turning back the odometers and obtaining new titles that reflected the lower mileage. The cars were then sold to retail used cars dealers and eventually to unknowing customers at a higher price than ordinarily could be obtained for vehicles of such higher mileage.

The government alleged that the low-mileage titles were obtained by a title "washing" scheme which relied upon original titles altered in Pennsylvania by co-conspirators and sent to additional co-conspirators in Virginia. Once in Virginia, these individuals (who were not then on trial) would apply for new Virginia titles which, when issued, reflected the lower mileage of the original altered documents.[3] The new Virginia titles were then returned to the wholesale used car dealership at which the petitioner was employed in Manheim, Pennsylvania, where the cars were then sold to a retail Pennsylvania used car dealer and a Pennsylvania automobile title subsequently obtained.

For trial purposes, the government selected two specific automobiles to demonstrate the operation. The transfer of the titles for these two cars constituted counts two through five of the indictment. Count 2 alleged the interstate transportation from Virginia to Pennsylvania of a Virginia DMV title for a 1984 Ford in violation of 18 U.S.C. 2314. Count 3 alleged the possession and uttering of that same title in violation of 18 U.S.C. 513 when it was presented at the Pennsylvania DMV to obtain a title for

[3] Unlike many other states, Virginia did not verify the mileage reflected on the out-of-state title.

the same 1984 Ford. Count 4 alleged a violation of 18 U.S.C. 2314 when the defendants received at the Pennsylvania dealership a Virginia title for a 1982 Mazda which had a lowered odometer reading. Count 5 alleged another violation of 18 U.S.C. 513 when that same Mazda title was presented to the Pennsylvania DMV to obtain a title so that the car could be sold in that state.

While defendants challenged the extent of their knowledge of the conspiracy, there was no serious dispute as to the factual allegations of the operation. The government presented testimony from various members of the organization in Pennsylvania who physically altered the original titles. There was no allegation that petitioner altered these titles. Rather, the government showed that petitioner, who was a title clerk for a Pennsylvania used car dealer, sent these altered titles (usually via Federal Express) to a used car dealer in Virginia and later would receive the new Virginia titles when they were returned by the Virginia dealer.

The government also presented testimony from the Virginia dealer who received the altered titles, obtained new Virginia titles that reflected the lower mileage, and then sent the Virginia titles to wholesale used car dealers in Pennsylvania. The cars with new Virginia titles were then sold to retail automobile dealers who would obtain local titles when the vehicles were sold to individual customers.

SUMMARY OF ARGUMENT

While the automobile titles issued in Virginia did contain false mileage figures, the interstate transportation

of those facially valid titles was not a violation of 18 U.S.C. 2314. The inability to conclude that the Virginia titles were falsely made, forged, altered or counterfeited in any way forecloses the receipt of such titles as a basis for criminal liability under 18 U.S.C. 2314.

To criminalize this particular conduct, some lower courts have "broadened" Section 2314 to include the transportation of valid titles with incorrect information. This broadened scope is without statutory or legislative basis and presents the possibility of far reaching criminal and civil repercussions if accepted.

ARGUMENT

THE CONDUCT OF THE PETITIONER IN RECEIVING THE VIRGINIA TITLES WAS NOT A VIOLATION OF 18 U.S.C. 2314

It is undisputed that the government's proof at trial demonstrated that the automobile titles were altered in Pennsylvania by someone other than the petitioner. It was also undisputed that the Virginia titles obtained by the used car dealer in Virginia and sent to the petitioner were not themselves altered in any way. There was no dispute that the Virginia titles were validly issued, albeit with an incorrect mileage figure. Nonetheless, the government elected to indict the petitioner under 18 U.S.C. 2314 for the transportation in interstate commerce of the Virginia titles only. Petitioner was *not* charged with sending the original altered titles to Virginia.

At the close of the evidence, the petitioner objected to the District Court on the grounds that the Virginia titles were not forged, altered, counterfeited or falsely made and thus not within the prohibition of Sec. 2314. The

District Court concluded otherwise and let the case proceed to the jury. (J.A. 1819) Despite the affirmance of this decision by the Third Circuit Court of Appeals, petitioner continues to insist that the government has advanced an incorrect theory of criminal liability and that counts 2 and 4 should not have been submitted to the jury.

Petitioner suggests that the government's theory of liability is incorrect for three reasons – any one of which should have resulted in dismissal of the Section 2314 counts.

A. Case Law Development of Section 2314 Suggests that the Conduct of the Petitioner Is Not Prohibited by the Statute.

The petitioner challenged the decision of the District Court as contrary to the holdings of several courts which considered the very same question, including *United States v. Sparrow*, 635 F.2d 794 (10th Cir. 1980), *cert. denied*, 450 U.S. 1004 (1981) The decision of the Third Circuit acknowledges the holding of *Sparrow*, but concluded that the "better rule" is represented by *United States v. Cotoia*, 785 F.2d 497 (4th Cir. 1986) and *United States v. Daly*, 716 F.2d 1499 (9th Cir. 1983), *cert. dismissed*, 465 U.S. 1075 (1984).[4] Petitioner must disagree.

---

[4] This apparently is the first opportunity for this Court to squarely consider this question. Mr. Sparrow sought review by this Court on other grounds. Mr. Cotoia did not seek review of the Fourth Circuit's decision and Mr. Daly's petition for *certiorari*, which was initially unopposed by the government, was dismissed at the suggestion of the government pursuant to *Molinaro v. New Jersey*, 396 U.S. 365 (1970), when Mr. Daly became a fugitive.

Section 2314 of Title 18 of the United States Code provides in pertinent part that:

> Whoever with unlawful or fraudulent intent transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered or counterfeited . . .
>
> Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

The Virginia titles for which the petitioner was convicted of illegally transporting do not qualify as a "falsely made, forged, altered or counterfeited" documents within the meaning of Section 2314. While these titles may have contained incorrect mileage figures and while the presence of such a figure may be violative of various state or federal statutes (none of which petitioner was charged with),[5] the interstate transportation of such titles does not violate Section 2314.

The Virginia titles themselves were never physically altered. Rather, they were issued by proper state officials based on titles sent from Pennsylvania that had been altered. Petitioner was never charged with the Pennsylvania-to-Virginia transfer but only with the transport of the unaltered Virginia titles back to Pennsylvania. Thus, the question that must be answered by this Court is whether the unaltered Virginia titles were "falsely made, forged,

---

[5] *See, e.g. Schmuck v. United States*, ___ U.S. ___, 109 S.Ct. 1443, 103 L.Ed2d 734 (1989).

altered, or counterfeited." Petitioner believes that the answer must be in the negative.

The Third Circuit appears to have adopted the rationale that an item is fraudulent under Section 2314 if it contains a single error that is present for whatever reason and regardless of the authenticity of the actual document. Petitioner suggests that such a brush is far too broad – particularly for a criminal statute.

The first court to petitioner's knowledge to consider this question under nearly identical circumstances agreed that the interstate transportation of valid automobile titles with incorrect mileage statements was not, in itself, a violation of Section 2314. *United States v. Rudge*, 474 F.Supp. 360 (S.D.Iowa 1979). Significantly, the government never elected to appeal that decision.

Several years after *Rudge*, the Tenth Circuit considered the same question in *United States v. Sparrow*, 614 F.2d 229 (10th Cir. 1980). In the initial panel decision, the court concluded that an automobile title that contained false information as to ownership is a forged or falsely made security. Upon consideration by the full court however, the Section 2314 convictions of Mr. Sparrow were vacated because "the certificate of title was duly executed by Oregon officials. The certificate of title itself was precisely what it purported to be. Only the facts underlying the document were false." *United States v. Sparrow*, 635 F.2d 794, 796 (10th Cir.) (*en banc*), *cert. denied*, 450 U.S. 1004 (1981).

In *Sparrow*, the Tenth Circuit mentioned several prior cases and contrasted their support for the proposition that a document is not covered within the purview of

Section 2314 if, although containing false information, is neither forged nor altered. *Marteney v. United States*, 216 F.2d 760 (10th Cir. 1954) [no violation of Section 2314 although false information on the document]; *United States v. Crim*, 527 F.2d 289 (10th Cir. 1975), *cert. denied*, 425 U.S. 905 (1976) [a false signature rendered the execution of documents false]. *Sparrow* remains today the rule within the Tenth Circuit.

In considering Section 2314 in the context of other securities, courts have concluded that the addition of false information to otherwise valid documents does not make the documents "falsely made" and have reversed Section 2314 convictions. *United States v. Massa*, 740 F.2d 629, 646 (8th Cir. 1984), *cert. denied*, 471 U.S. 1115 (1985); *United States v. Tyson*, 690 F.2d 9 (1st Cir. 1982). Reversal was required because the words "falsely made" relate to "genuineness of execution and not falsity of content." *Marteney*, 216 F.2d at 763.

Subsequent to *Sparrow*, the Ninth Circuit considered the application of Section 2314 to automobile titles in which the *identity* and *ownership* information had been altered. In *United States v. Daly*, 716 F.2d 1499 (9th Cir. 1983), *cert. denied*, 465 U.S. 1075 (1984), a panel of the Ninth Circuit considered the case of Nebraska titles issued on the basis of *counterfeit* California and Nevada titles which contained false owner names and the VIN information of *stolen* vehicles. *Id.* at 1503. In concluding that the new Nebraska titles were covered by Section 2314, the court reasoned that official state participation in issuing the new titles did not change the false nature of the ownership, which is, of course, the principal purpose

of a vehicle title. *Id.* at 1509. Unlike the situation in *Daly*, here the ownership information was *never* altered.

The decision in *Daly* was subsequently examined by the Fourth Circuit in *United States v. Cotoia*, 785 F.2d 497 (4th Cir. 1986), in which the indictment charged both the transport of the altered titles to North Carolina and the return of the new titles to Rhode Island. The Fourth Circuit declined to follow the reasoning of the District Court in *Rudge* because the government in *Rudge* alleged a Section 2314 violation only as to the "new" titles (as the government did here) and not the interstate transport of the admittedly altered "old" titles. The government in *Cotoia* had not so limited its allegation and the Fourth Circuit concluded that the entire scheme of altered "old" titles transported interstate to produce facially valid "new" titles was a criminal endeavor that Section 2314 should cover. *Id.* at 501.[6] Thus, it is significant that what the government formulated as its theory of liability in *Cotoia* to justify Section 2314 liability was missing in the present case.

Prior to the Court of Appeals decision in this case, the only other direct guidance to the question on the Third Circuit was provided by the instant District Court

[6] The only support offered by the *Cotoia* court regarding the materiality and importance of a false odometer reading was a Sixth Circuit *per curiam* opinion that dealt with the sale of horses. *United States v. Bowers*, 739 F.2d 1050 (6th Cir.), *cert. denied, sub nom., Oakes v. United States*, 469 U.S. 861 (1984). Unlike the petitioner's case, it was the identity and ownership of the horses that had been altered in the *Bowers* scheme and which served as the basis for the court's holding of inclusion under Section 2314.

which rejected *Sparrow* and *Rudge* and concluded in a 1985 case that the "broader concept" of *Daly* should apply to any scheme in which the person securing the title included false information. *United States v. Kaufman*, 670 F.Supp. 134, 136 (M.D.Pa. 1985).[7] That decision was affirmed by a panel of the Third Circuit in an unpublished order. *United States v. Kaufman*, 782 F.2d 1032 (3rd Cir. 1985).

Other than a reference to the above mentioned cases, the Court of Appeals decision below concluded only that the "better rule" was for the broader approach of inclusion. 888 F.2d at 285.

Neither the government at trial nor the court below has ever suggested that the altered mileage figures on Virginia titles had any effect on their validity. In fact, the Court of Appeals acknowledged, as it must, that valid legal title to a vehicle is transferred even where the title document reflects false mileage figures. While the Court of Appeals suggested (without any statutory support) that mileage is a material part of a title certificate, even

[7] The *Kaufman* decision cites as its only other authority a Fifth Circuit decision, *United States v. Mitchell*, 588 F.2d 481 (5th Cir. 1979). Although *Mitchell* dealt with backdated certificates of deposit and not automobile titles, it did lend support to the "broader" scope rationale of Section 2314 interpretation. While it could be argued that the CDs in *Mitchell* were fraudulent on their face because of the backdating, the more significant argument is that the Fifth Circuit concluded that the CDs were falsely made because the maker knew at the time of their issuance that there were insufficient funds to cover the securities. *Id.* at 484. In any case, *Mitchell's* application to facially valid automobile titles is tenuous at best.

accepting this proposition for purposes of argument, inclusion of false mileage figures does not result in the same effects (stolen vehicles, fictitious owners and altered VIN information) that were present and which justified the convictions in the cases relied upon by the Third Circuit to support the "better rule" conclusion. Petitioner suggests that the better rule must be that of *Sparrow* and that the present attempt to introduce a new and broader interpretation of Section 2314 should be rejected by this Court.

B. Principles of Statutory Construction Suggest that the Conduct of the Petitioner its Not Prohibited by Section 2314.

The principle of strict construction of criminal statutes demands that the language of a criminal statute must be strictly construed and limited to its terms and that any ambiguity must be resolved in favor of lenity. *United States v. Enmons*, 410 U.S. 396, 411 (1973). This is a principle of long standing application in this Court. *United States v. Wiltberger*, 18 U.S. 76 (1820).

The principle of strict construction of criminal statutes also demands that "some determinate limits be established based upon the actual words of the statute." *United States v. Campos-Serrano*, 404 U.S. 293, 299 (1971).

The District Court was simply incorrect in its *Kaufman* opinion when it concluded that the inclusion of the transportation of valid titles with false mileage should be prohibited under Section 2314 as a "broader concept." 670 F.Supp. at 136. The legal support to justify the "broadening" of the statute is nonexistent and flies in the face of

the foregoing rule of strict construction of a criminal statute. This Court has previously overruled attempts by lower courts to expand Section 2314 for conduct not specifically covered by the words of the statute. *Dowling v. United States*, 473 U.S. 207 (1985)

What is clear is that Section 2314 requires the transported securities be one of four listed categories in order for their transportation to be illegal. There has been no dispute at any level of this proceeding that the Virginia titles in question were not counterfeited. Nor were they altered or forged. As the court below correctly recognized, the Virginia titles were valid automobile titles that were capable of passing legal title from one person to another. Thus, the only remaining category is that of "falsely made." Section 2314 itself does not define this term, nor is the term defined in other sections of the criminal code in which it is employed.[8]

Although Section 2314 does not define the term, "falsely made," petitioner notes that the term "forged" was usually defined at common law as a "false making" or alteration of a written instrument with intent to defraud. *See, Gilbert v. United States*, 370 U.S. 650, 656-657, n. 8-10 (1962). Indeed, several courts have concluded that forgery and "false making" are essentially synonymous. *Sparrow*, 635 F.2d at 796; *United States v. Jones*, 553 F.2d 352, 354 (4th Cir.), *cert. denied*, 431 U.S. 568 (1977); *United*

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[8] *See, e.g.* 18 U.S.C. 478 (foreign obligations); 18 U.S.C. 495 (contracts, deeds or powers of attorneys); 18 U.S.C. 507 (ship's papers); 18 U.S.C. 1426 (naturalization papers); 18 U.S.C. 1543 (passports).

States v. Johnson, 504 F.2d 622, 625 (7th Cir. 1974); *Marteney*, 216 F.2d at 763; *Greathouse v. United States*, 170 F.2d 512, 514 (4th Cir. 1948).[9]

This Court in *Gilbert* concluded that where the falsity lies in the representation of underlying facts described in a document, but not in the genuineness of its execution, forgery is generally found not to exist. Under the view of synonymous conduct or equivalency, a security in the form of a motor vehicle certificate of title is not falsely made if it is issued as a genuine certificate by the appropriate state authorities and the presence of fictitious information that does not affect ownership, cannot result in a charge of false making.

C. The Legislative History of Section 2314 Does Not Suggest the Inclusion of Petitioner's Conduct as Illegal Action.

Petitioner believes that no support for the Third Circuit's "broader" rule can be found in the legislative history of the statute in question.

As this Court observed in *Dowling*: "criminal statutes [do not] take on straitjackets upon enactment." 473 U.S. at 228. Thus, the canon of strict construction of criminal statutes "does not mean that every criminal statute must be given the narrowest possible meaning in complete

[9] Other courts have opined that statutory language which includes the phrase "false making" is a legislative attempt to broaden a statute beyond the traditional concepts of forgery. *See, United States v. Huntley*, 535 F.2d 1400, 1402 (5th Cir. 1976), *cert. denied*, 430 U.S. 929 (1977).

disregard of the purpose of the legislation." *United States v. Bramblett*, 348 U.S. 503, 510 (1955). Mindful of these guidelines to statutory interpretation however, the attempt to discover any Congressional intent to prohibit the type of conduct for which the petitioner was convicted must ultimately fail.

Congress enacted the progenitor to the current Section 2314 as an extension of the National Motor Vehicle Theft Act in 1919. (41 Stat. 324). In 1934, Congress extended the provisions of the Act to other stolen property when it created the National Stolen Property Act. (48 Stat. 794) The predecessor paragraph to the provision at issue in this case was enacted in 1939 as an amendment to the National Stolen Property Act. (53 Stat. 1178) This was the first appearance of the "falsely made" language in the statute. However, the legislative history to the amendment provides no assistance in defining the term "falsely made." The committee reports do not discuss the intended meaning of the term. See, S.Rep. No. 674, 76th Cong. 1st Sess (1939); H.R.Rep. No. 422, 76th Cong, 1st Sess.[10] Subsequent amendments and additions have not filled the void of the silence concerning what Congress meant by "falsely made."

Petitioner notes that Congress has not hesitated to amend Section 2314 in response to judicial determinations that the language of the statute does not cover

[10] While admittedly not conclusive in nature, the legislative reports on the 1939 amendment do include correspondence from the Attorney General, dated December 29, 1938, which recommended the proposed amendment in order to expand the statute to include the crime of embezzlement.

specific conduct (amended to expressly include traveler's checks). *See, Street v. United States*, 331 F.2d 151 (8th Cir. 1964); H.R.Rep. No. 1728, 90th Cong., 2d Sess, 1968 U.S.Code Cong. & Ad. News, 3654. No such attempt at amendment or explanation has been made by Congress subsequent to the initial determinations by the courts in *Sparrow* and *Rudge* that the conduct at issue here is not prohibited by Section 2314.

In the complete absence of any Congressional explanation of what is meant by the term "falsely made," the plain meaning of the statute must prevail over any attempt to broaden its coverage for conduct which was not even contemplated at the time of the statute's passage.

D. There Are Sound Policy Reasons for Rejecting the "Broader Concept" Approach of the Third Circuit.

This Court recognized in *Dowling* that the application of the government's theory of broadened liability of Section 2314 would result in serious and undesirable consequences ... ch an expansive view were to be approved. Petitioner suggests that the same is true of the government's approach here.

In 1985 (the year of the violations alleged in the present indictment) there were 171,654,000 vehicle registrations in the United States.[11] In that same year, over 7,608,308 used cars were reported sold by United States franchised dealers alone.[12] Thus, the implication of the

[11] U.S. Department of Commerce, 1989 Statistical Abstract of the United States, p. 595.

[12] Ward's Automotive Yearbook (1988), p. 160.

government's theory of liability imposes a considerable impact upon everyday commerce. As the facts at the trial below demonstrated, a typical used car title passes between many parties (from the new car trade-in dealer to the auction house to the wholesale dealer to the used car dealer to the ultimate consumer) within a short period of time. If the government's theory is to be upheld and the conclusion reached that any title derived from the original altered title is somehow "illegal," the repercussions will be staggering – literally millions of heretofore legitimate automobile transactions will be open to dispute.

As shown by the evidence at the trial below, a co-conspirator in this case testified that he and his wife alone were involved in six to ten thousand title washes within a period of only a few years. The evidence showed that he was only one of many who engaged in title "washing." Thus, to invalidate all of these automobile titles because they contain an incorrect mileage figure may well result in havoc in the stream of automobile commerce. This was recognized by the lower courts in both *Sparrow* and *Rudge*.

In addition, approval of the government's theory of liability in this case means that criminal liability will be extended to the makers of documents containing false, but not necessarily materially false, information who would not otherwise be held criminally liable under Section 2314. As demonstrated above, prior to this case, forgery would not be appropriate for the conduct charged here. By expanding "false making" to include the instant conduct, the Court would open a liability umbrella over Section 2314 that was neither intended by the Congress nor justified by common sense.

CONCLUSION

Wherefore, for the foregoing reasons, petitioner respectfully submits that the opinion of the Third Circuit Court of Appeals be reversed.

Respectfully submitted,

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No. 89-964

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In the Supreme Court of the United States

OCTOBER TERM, 1989

RAYMOND J. MOSKAL, SR., PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether 18 U.S.C. 2314, which prohibits the interstate transportation of instruments that are "falsely made," applies to the transportation of valid automobile certificates of title that contain false mileage information.

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BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the court of appeals (Pet. App. 3a-8a) is reported at 888 F.2d 283.

JURISDICTION

The judgment of the court of appeals (Pet. App. 1a-2a) was entered on October 18, 1989. The petition for a writ of certiorari was filed on December 16, 1989, and granted on March 19, 1990. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATEMENT

After a jury trial in the United States District Court for the Middle District of Pennsylvania, petitioner was convicted on two counts of interstate

transportation of falsely made securities, 18 U.S.C. 2314, two counts of uttering counterfeit state securities, 18 U.S.C. 513, and conspiracy to violate those statutes, 18 U.S.C. 371.[1] He was sentenced to six months' imprisonment on the conspiracy count. On the remaining counts, he received concurrent terms of two years' imprisonment, but those sentences were suspended in favor of three years' probation. The court of appeals affirmed. Pet. App. 3a-8a.[2]

1. The evidence at trial showed that between December 1984 and July 1985 petitioner engaged in an automobile "title washing" scheme, the purpose of which was to obtain Virginia automobile titles bearing false, low-mileage figures. Petitioner was the office manager for co-defendant Alvin Davis, Jr., who owned a wholesale auto dealership in Manheim, Pennsylvania. Pet. App. 5a. Co-defendant Dennis Smith and co-conspirator Curman "Buddy" Dickens owned and operated Buddy's Auto Sales, a wholesale auto dealership in Virginia.

The scheme operated as follows: Persons working with Davis would purchase used cars with high mileage for resale to the public. The odometers on those cars would be "rolled back" to reflect much lower mileage figures. Davis's associates would then alter the titles to the cars, to accord with the rolled back odometer readings. Packages of the altered certifi-

[1] Co-defendants Alvin Davis, Jr., and Dennis Smith were tried and convicted with petitioner. The court of appeals affirmed their convictions in the same opinion that disposed of petitioner's claims.

[2] The judges of the Third Circuit all recused themselves from hearing this case. As a result, the Chief Justice appointed three judges from the Second Circuit to sit by designation in the Third Circuit. See Pet. App. 5.

cates of title would be sent from Davis's dealership in Pennsylvania to Buddy's Auto Sales in Virginia. Dickens and his wife would then use the altered titles to apply for Virginia title certificates for the cars in the name of their dealership. Pet. App. 5a-6a. The Virginia titles would contain the lower odometer readings. The falsity of the odometer readings could not be detected from the Virginia titles, because the lower odometer readings on the titles had been entered by the Virginia state agency based on the altered titles sent from Pennsylvania. After obtaining the new titles, Dickens and Smith would send them to the dealership in Pennsylvania, charging a fee of $100 per title for their services. Pet. App. 6a. Petitioner, who participated in sending the old, altered titles to Virginia, would receive the new, "washed" titles for the dealership. See Pet. 6. Davis would then distribute the new Virginia titles to dealers who had provided the original titles to him, charging them a fee for his title-washing service. Ultimately, the dealers sold the vehicles with rolled-back odometers and washed titles to unsuspecting customers. Pet. App. 6a.

2. The indictment charged that petitioner transported two washed Virginia titles in interstate commerce in violation of 18 U.S.C. 2314, which prohibits the intentional transportation in interstate commerce of any "falsely made, forged, altered, or counterfeited securities." J.A. 11-13. In his defense, petitioner argued that the prohibition in 18 U.S.C. 2314 against transporting a "falsely made" security applies only to documents that are not themselves genuine, *i.e.*, documents that are not what they purport to be. He conceded that the washed titles might have contained false information, but he argued that because the titles themselves were "genuine," *i.e.*,

they were issued by the appropriate Virginia officials and were not altered thereafter, he could not be convicted under Section 2314. The trial court rejected that claim, and petitioner was found guilty.

3. The court of appeals affirmed. Pet. App. 3a-8a. It noted that the Tenth Circuit had held that the term "falsely made" relates to the genuineness of the document, not the falsity of its contents. See *United States* v. *Sparrow*, 635 F.2d 794 (1980) (en banc), cert. denied, 450 U.S. 1004 (1981). The court, however, chose to follow more recent cases holding to the contrary. The stated mileage figure, the court explained, is a material part of a title certificate. The fact that valid title may be transferred by the certificate "does not vitiate the fraud that is foisted on the unsuspecting customer when the falsely made document is introduced into commerce." Pet. App. 7. In light of the purpose of Section 2314 to prevent fraudulent documents from being circulated interstate, the court adopted the majority view that the term "falsely made" in Section 2314 is not limited to counterfeited, forged, or altered documents, but includes documents into which false information was inserted when they were made. Pet. App. 7a.[3]

SUMMARY OF ARGUMENT

A. Section 2314 prohibits the intentional interstate transportation of any security that is "falsely made," without regard to the method used to make the security false. The statute does not define or in any way limit the meaning of "falsely made." There is therefore no textual basis on which to premise a

[3] The court also rejected petitioner's attack on his Section 513 convictions. Pet. App. 7a-8a. Petitioner does not here challenge his convictions on these counts.

construction limiting the statute based on the method by which a false document is produced.

Moreover, the term "falsely made" would be superfluous if it referred solely to documents that were false in their execution as opposed to their content. Section 2314 already prohibits the transportation of "forged, altered, or counterfeited" securities. If "falsely made" is to have an independent function, it must reach the falsity effected when false information is inserted into a genuine document at the time it is made.

The straightforward reading of "falsely made" indicated by the statutory language promotes the purposes of Section 2314. That Section was designed to prevent frauds made possible or made easier by using interstate transportation. The fraud perpetrated in this case is exactly the kind of fraud that Section 2314 was designed to combat. Titles are "washed" out-of-state because the lack of uniformity in state titling requirements makes fraudulent information harder to detect and trace. In addition, titles can be "washed" in those States with the most manipulable titling procedures. The fraudulent documents produced by exploiting those differences in state practice are at least as dangerous as those more simply produced by forging or altering documents. It would be incongruous to conclude that the broad anti-fraud policies of Section 2314 reach only the latter two categories.

B. Although the term "falsely made" was given a restrictive interpretation by many common law courts, such a construction is not warranted here. As this Court has noted, Congress cannot be presumed to have intended to attach an arcane or antiquated common law meaning to a term when that meaning would be inconsistent with Congress's intent.

The predominant view among American common law ~~courts~~ was that the terms "falsely made" and "forged" were synonymous. There is, however, no indication that in 1939 or afterwards Congress recognized or meant to adopt the predominant common law view. To the contrary, Congress's actions during recodification of the Criminal Code in 1948 and its amendment of the National Stolen Property Act in 1984 indicate that it has long held a broader view of the term "falsely made."

In 1948, Congress reenacted and recodified Section 2314, as part of a recodification of the Criminal Code. Act of June 25, 1948, ch. 645, § 1, 62 Stat. 806. At the same time, it restructured another provision, Section 29 of the Criminal Code of 1909 (at that time recodified as 18 U.S.C. 73 (1946)), the pertinent language of which was the same as that in Section 2314 (concerning objects "falsely made, forged, altered, or counterfeited"). The manner in which Congress restructured Section 29 demonstrated that it understood "falsely made" to mean false in execution or content. A particular clause of Section 29 had been previously interpreted by this Court in *United States* v. *Davis*, 231 U.S. 183 (1913) to refer to both types of falsity; Congress in 1948 specifically linked that clause to the part of Section 29 that dealt with "falsely made" documents. Because it is clear that Congress did not intend in 1948 to narrow the substantive reach of Section 29, it is evident that the Congress that reenacted both Section 29 and Section 2314 assumed that the phrase "falsely made" was not limited to documents that are forged, altered, or counterfeited.

In 1984, Congress provided an even more unambiguous indication that it did not understand the term "falsely made" to carry a restrictive meaning.

That year, Congress amended the definition of "securities" for purposes of Section 2314 to include "[any] valid or blank motor vehicle title." Motor Vehicle Theft Law Enforcement Act of 1984, Pub. L. No. 98-547, § 202, 98 Stat. 2770. Since "counterfeited" or "altered" titles cannot be valid, Congress's action indicates that it regarded the term "falsely made" to include genuine documents into which false information had been inserted.

The legislative history of the 1984 amendment confirms this view: It demonstrates that Congress was concerned with "title washing" schemes similar to the one here. To give the term "falsely made" a narrow interpretation would defeat the purpose of the 1984 amendment. Thus, it is evident that the term "falsely made" in Section 2314 applies to documents such as the automobile titles in this case, which were produced by officials duped by false information.

ARGUMENT

AN AUTOMOBILE TITLE IS "FALSELY MADE" WITHIN THE MEANING OF SECTION 2314 IF FALSE INFORMATION WAS INSERTED INTO IT AT THE TIME OF ITS MAKING

A. The Language And Purposes Of Section 2314 Indicate That It Applies To All False Documents, Regardless of the Method Used To Make The Documents False

Section 2314 punishes the knowing transportation of any security that is "falsely made," as well as any security that is "forged, altered, or counterfeited." Petitioner was charged with transporting genuine Virginia automobile titles, which contained false odometer readings that petitioner and his co-conspirators had fraudulently induced the Commonwealth of Virginia to include on the title forms. Petitioner argues that the term "falsely made" does not apply

to the "genuine" Virginia titles, even though the falsehood in the title forms was procured by fraud, and even though the difference between the "genuine" Virginia title documents and forged or altered title documents is simply that the defendants induced the Virginia authorities to introduce the false material into the title forms rather than doing it themselves.

We submit that for two reasons the term "falsely made" applies to the Virginia automobile titles at issue in this case. First, the addition of the term "falsely made" to the other categories of covered securities suggests that Congress did not mean to limit the statute to "nongenuine" documents, *i.e.*, documents that are forged, altered, or counterfeited. Second, petitioner's restrictive interpretation of the term "falsely made" would be inconsistent with the broad antifraud purposes of Section 2314; with respect to their capacity to promote fraud, there is no sensible basis on which to distinguish between nongenuine (*i.e.*, false, altered, or counterfeited) documents and documents that are "genuine," but contain material falsehoods.

1. The term "falsely made" is general in nature. It is not defined in the statute, and there is no indication that the term was meant to be used restrictively. Nothing in the term itself, or anything else in the statute, suggests a distinction between a document that is "falsely made" because it was printed on an unauthorized press and one that is "falsely made" because it contained false representations when it was created. Rather, the generality of the term indicates that "[its] purpose [is to] * * * prohibit the fraudulent introduction into commerce of falsely made documents regardless of the precise method by which the introducer or his confederates

effected their lack of authenticity." *United States* v. *Huntley*, 535 F.2d 1400, 1402 (5th Cir. 1976), cert. denied, 430 U.S. 929 (1977); see also *United States* v. *Daly*, 716 F.2d 1499, 1509 (9th Cir. 1983); *United States* v. *Mitchell*, 588 F.2d 481, 484 (5th Cir.), cert. denied, 442 U.S. 940 (1979).

The same conclusion is suggested by the principle that a court must "give effect, if possible, to every clause and word of a statute." *United States* v. *Menasche*, 348 U.S. 528, 538-539 (1955); see, *e.g.*, *Pennsylvania Dep't of Public Welfare* v. *Davenport*, No. 89-156 (May 29, 1990), slip op. 8. Petitioner contends that "falsely made" (Pet. Br. 15-16) is synonymous with "forged"—another in the list of terms Congress used to describe the kinds of documents covered by Section 2314. In petitioner's view, both modifiers identify documents that are false in their execution, as opposed to false in their content. But if that is so, the term "falsely made" is mere surplusage. To give the term "falsely made" an independent function in the statute, it is necessary to construe it to reach falsity effected by a means other than forgery, altering, or counterfeiting. That means the term must apply to falsity effected by the insertion of false information in the process leading to the creation of a genuine document.

Most courts of appeals that have considered the issue have rejected petitioner's narrow reading of "falsely made."[4] In the context of automobile title

[4] The Fourth, Fifth, Sixth, and Ninth Circuits have agreed with the Third Circuit's construction of the term "falsely made." See, *e.g.*, *United States* v. *Cotoia*, 785 F.2d 497, 501-502 (4th Cir. 1986); *United States* v. *Daly*, 716 F.2d at 1507-1509; *United States* v. *Mitchell*, 588 F.2d at 484; *United States* v. *Tucker*, 473 F.2d 1290, 1293-1294 (6th Cir.), cert. denied, 412 U.S. 942 (1973); *United States* v. *Huntley*, 535

frauds, in particular, most courts have held that Congress added the words "falsely made" to broaden the statute's compass beyond forgery to include the "false makings" that are effected when motor vehicle titles are procured on the basis on false information. *United States* v. *Daly*, 716 F.2d at 1507-1509; *United States* v. *Cotoia*, 785 F.2d 497, 501-502 (4th Cir. 1986); *United States* v. *Kauffman*, 670 F. Supp. 134, 136 (M.D. Pa. 1985), aff'd, 782 F.2d 1032 (3d Cir. 1985). Contra *United States* v. *Sparrow*, 635 F.2d 794 (10th Cir. 1980) (en banc), cert. denied, 450 U.S. 1004 (1981). The courts in the majority have recognized, as has this Court, that

> [a] genuine instrument containing a false statement of facts, used in support of a claim, the party knowing it to be false, and using it with the intent to defraud, presents a case not distinguishable in principle, or in turpitude, or in its mischievous effects, from one in which every part of the instrument is fabricated; and when the one is as fully within the words of the statute as the other, we may well suppose that it was intended to embrace it

United States v. *Staats*, 49 U.S. (8 How.) 41, 47 (1850).

2. In addition its consistency with the statutory language, the court of appeals' construction of

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F.2d at 1402. The Tenth Circuit has decided to the contrary in *United States* v. *Sparrow*, 635 F.2d 794 (1980) (en banc), cert. denied, 450 U.S. 1004 (1981). Older decisions in the Second, Seventh, and Eighth Circuits agreed with the view later taken by the Tenth Circuit in the *Sparrow* case. See *Melvin* v. *United States*, 316 F.2d 647, 648 (7th Cir. 1963); *United States* v. *Brown*, 246 F.2d 541, 542 (2d Cir. 1957); *Martyn* v. *United States*, 176 F.2d 609, 610 (8th Cir. 1949).

"falsely made" accords with the purposes of Section 2314. The provision that is now Section 2314 was first enacted as part of the National Stolen Property Act (NSPA) of 1934, ch. 333, § 3, 48 Stat. 794-795. The language at issue in this case was added as an amendment in 1939 in order to "widen[] the scope" of the Act, expanding its prohibitions against the interstate transportation of stolen goods to include trafficking in securities that had been "falsely made, forged, altered, or counterfeited." Act of Aug. 3, 1939, ch. 413, § 1, 53 Stat. 1178.[5]

Specifically, Section 2314 as amended was designed to prevent frauds perpetrated or made easier by using interstate transportation. *United States* v. *Sheridan*, 329 U.S. 379, 383-384 (1946). In addition, Congress intended to aid the States in detecting and punishing those who committed crimes under state law but used channels of interstate commerce to evade identification and prosecution. *Ibid.*; see also *McElroy* v. *United States*, 455 U.S. 642, 654-655 & n.19 (1982) (noting that federal authority was necessary to investigate certain crimes and to compel witnesses to testify).[6]

The fraud perpetrated here is precisely the type that is facilitated by interstate transportation. Ti-

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[5] The 1939 Act also added a prohibition against the transportation of embezzled goods, securities, and money. See ch. 413, § 1, 53 Stat. 1178.

[6] Although the main purposes of the 1939 amendment are clear, the legislative history of the provision is scanty. The brief references in the legislative history to the scope of the new prohibition focused mainly on counterfeited securities. See H.R. Rep. No. 422, 76th Cong., 1st Sess. 3 (1939) (incorporating letter of Attorney General); S. Rep. No. 674, 76th Cong., 1st Sess. 1-2 (1939).

tles are washed out-of-state because States do not have uniform titling requirements or procedures.[7] Those running a title washing scheme can choose the States with the most manipulable procedures. Furthermore, when title is transferred between States, there is little chance that inconsistency in the information required on title applications will be traced.[8] And, even when state officials detect title washing schemes, it is difficult to investigate and take steps against out-of-state participants.

It would be inconsistent with the anti-fraud purposes of Section 2314 for liability to turn on what

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[7] In 1986, Congress amended the Motor Vehicle Information and Cost Savings Act (1972), Pub. L. No. 92-513, 86 Stat. 947, to provide that certain information uniformly be required in registering title of motor vehicles. Truth in Mileage Act of 1986, Pub. L. No. 99-579, 100 Stat. 3309. At that time, six States did not require that mileage information be included on state titles; other States did not provide space on the title for odometer readings upon reassignment of title; still other States did not enforce existing requirements that mileage be disclosed. See S. Rep. No. 47, 99th Cong., 1st Sess. 1-2 (1985).

[8] In hearings on legislation to strenthen automobile anti-theft measures in a number of statutes, including the National Stolen Property Act, Congress in 1980 reviewed testimony detailing the problems created by disparate and variously enforced state titling programs. *Motor Vehicle Theft Prevention Act: Joint Hearings on H.R. 4178 Before the House Comm. on Interstate and Foreign Commerce and the House Comm. on Foreign Affairs*, 96th Cong., 2d Sess. (1980). According to material submitted by the U.S. Department of Transportation, weaknesses in state titling systems stem from the absence of review procedures designed to detect counterfeiting or alteration, the lack of familiarity by state personnel with foreign state title documents, and the failure by States to require verification of foreign title validity. *Id.* at 316, 317-318.

amounts to the timing of the introduction of falsehoods into the creation of a document used to promote fraud. Consider the status of three fraudulent documents: (1) an entirely bogus document that contains false information; (2) a genuine document that was altered after its making to add the same false information; and (3) a genuine document in which the false information was incorporated during the process of making the document. All three documents have similar capacity for mischief. Indeed, documents of each type could have been used interchangeably in the very fraud at issue in this case. If anything, the third type of document—the type that would be excluded from Section 2314 under petitioner's construction—is more dangerous than the other two because the falsehood, which is incorporated into a genuine document, is more difficult to detect. In light of the objectives Section 2314 was meant to serve, it would make no sense to include the first two categories of documents, but not the third. As the court of appeals put the point in *United States* v. *Daly*, 716 F.2d at 1509, it would be incongruous to conclude that Congress intended to exempt from the scope of Section 2314 "clever schemes" such as washing motor vehicle titles, in which the schemes succeed by "induc[ing] state participation in the creation of fraudulent documents." Thus, the broader interpretation of Section 2314 "accord[s] with the statutory purpose of making guilt or innocence turn upon whether the actor wrongfully intended to place into commerce a falsely made document instead of focusing upon the precise method by which its lack of authenticity was effected." *United States* v. *Tucker*, 473 F.2d 1290, 1294 (6th Cir. 1973).

B. Although Most Common Law Courts Assumed That The Term "Falsely Made" Referred To Forgery, Congress Evidently Adopted The Competing Position That "Falsely Made" Applies To Documents That Were False When Made

When Congress uses a well-known common law term without defining it, it is generally presumed, in the absence of contrary indications, that Congress intended to adopt the common law meaning of the term. *Bell* v. *United States*, 462 U.S. 356, 360 (1983); *United States* v. *Turley*, 352 U.S. 407, 411 (1957); *Gilbert* v. *United States*, 370 U.S. 650, 655 (1962). That proposition, however, is simply an application of the more general principle that Congress ordinarily intends undefined terms to have their conventional meaning. See *Morissette* v. *United States*, 342 U.S. 246, 263 (1952) ("where Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, * * * absence of contrary direction may be taken as satisfaction with widely accepted definitions, not as a departure from them").

Where the common law definition of a term accords with the conventional understanding of the term, that definition is naturally presumed to be the one Congress intended. But the common law definition does not ordinarily apply where "the present common understanding of the word departs largely from the technical meaning it had at the old common law." *Reagan* v. *United States*, 157 U.S. 301, 302 (1895) (refusing to adopt the common law definition of the term "felony"). Thus, even where a term had a clear common law meaning, the Court has applied the "ordinary, contemporary, common meaning" of the term in preference to an antiquated formulation from early common law. See *Perrin* v.

United States, 444 U.S. 37, 42 (1979) ("bribery" under the Travel Act, 18 U.S.C. 1952, is not confined to the common law definition); *United States* v. *Nardello*, 393 U.S. 286, 292-293 (1969) ("extortion" under the Travel Act is defined according to its contemporary understanding, not according to the restrictive common law definition). In concluding that the offense proscribed in 18 U.S.C. 2113(b) is not limited to common law larceny, the Court stated:

> We cannot believe that Congress wished to limit the scope of the amended Act's coverage, and thus limit its remedial purpose, on the basis of an arcane and artificial distinction more suited to the social conditions of 18th-century England than the needs of 20th-century America.

Bell v. *United States*, 462 U.S. 356, 362 (1983). More recently, the Court declined to interpret the term "burglary" in a modern statute according to its common law meaning; to the contrary, the Court applied the rule that a statutory term should not be given its common law meaning "when that meaning is obsolete or inconsistent with the statute's purpose." *Taylor* v. *United States*, No. 88-7194 (May 29, 1990), slip op. 18. Likewise, the Court has weighed heavily indications in the legislative history that Congress intended to depart from the common law usage. *Bell*, 462 U.S. at 361-362; *Perrin*, 444 U.S. at 45-49.

The restrictive common law understanding of the term "falsely made" should not be applied to Section 2314, because it would be inconsistent with the purposes of the statute, as we have shown above. In addition, the available evidence indicates that Congress intended the term "falsely made" in Section 2314 to have a broader reach than most common law courts had given it.

We recognize that the predominant view among American common law courts was that the terms "falsely made" and "forged" were synonymous.[9] The courts that took that view most frequently reasoned from the definition of forgery by legal authorities as a "false" or "fraudulent making"; they then equated that proposition with its converse—that a document that was "falsely made" had to be forged in a narrow sense. See, *e.g.*, *United States* v. *Wentworth*, 11 F. 52, 55 (C.C.D.N.H. 1882) ("It is the '*false making*' which the statute makes an offence, and this is forgery as described in all the elementary books."). In turn, the courts determined that "[f]orgery cannot be committed by the making of a genuine instrument, though the statements made therein are untrue. The words 'whoever falsely makes' generally apply to the false making of the writing as distinguished from the contents of the instrument itself." *Goucher* v. *State*, 113 Neb. 352, 355, 204 N.W. 967, 968 (1925) (citations omitted).

While most courts treated the term "falsely made" as equivalent to "forged" in the narrow sense," that view was not universally followed in this country. A

[9] See, *e.g.*, *Goucher* v. *State*, 113 Neb. 352, 354-355, 204 N.W. 967, 968 (1925); *State* v. *Ford*, 89 Or. 121, 172 P. 802 (1918); *People* v. *Bendit*, 111 Cal. 274, 43 P. 901 (1896); *State* v. *Corfield*, 46 Kan. 207, 26 P. 498 (1890); *State* v. *Young*, 46 N.H. 266 (1865).

Cases interpreting the same phrase in federal statutes generally adopted the same approach. See *United States ex rel. Starr* v. *Mulligan*, 59 F.2d 200 (2d Cir. 1932); *United States* v. *Wentworth*, 11 F. 52 (C.C.D.N.H. 1882); *United States* v. *Corbin*, 11 F. 238 (C.C.D.N.H. 1882); *United States* v. *Smith*, 262 F. 191 (D. Ind. 1920); *United States* v. *Glasener*, 81 F. 566 (S.D. Cal. 1897); *United States* v. *Moore*, 60 F. 738 (N.D.N.Y. 1894); *United States* v. *Cameron*, 3 Dak. 132, 13 N.W. 561 (1882).

number of courts reasoned that a defendant could be guilty of falsely making a validly executed document, "in case it be false in any material part, and calculated to induce another to give credit to it as genuine and authentic." *Luttrell* v. *State*, 85 Tenn. 232, 237, 1 S.W. 886, 888 (1886).[10] And in England, a significant line of authority accorded with the minority American position.[11]

[10] See, *e.g.*, *United States* v. *Hartman*, 65 F. 490 (E.D. Mo. 1894); *Ex parte Hibbs*, 26 F. 421 (D. Ore. 1886); *Commonwealth* v. *Wilson*, 89 Ky. 157, 12 S.W. 264 (1889); *Moore* v. *Commonwealth*, 92 Ky. 630, 18 S.W. 833 (1892); *Luttrell* v. *State*, 85 Tenn. 232, 1 S.W. 886 (1886). For a comparison of the common law approaches, see Annotation, *Genuine Making of Instrument for Purpose of Defrauding as Constituting Forgery*, 41 A.L.R. 229 (1926); see also 37 C.J.S. *Forgery* §§ 5, 11 (1943 & Supp. 1989).

In fact, even assuming the equivalence of "false making" and "forgery" did not end the inquiry for a number of courts, since "forgery" itself can include procuring a genuine signature by ruse, or sleight of hand. As the court noted in *State* v. *Shurtliff*, 18 Me. 368, 371 (1841), where the defendant had switched deeds unbeknownst to a seller:

> The whole was done by the hand, or by the procurement of the defendant. It does not lessen the turpitude of the offence, that the party whom he sought to defraud was made in part his involuntary agent, in effecting his purpose. * * * In truth the signature to that false instrument, in a moral and legal point of view, is as much imputable to him, as if he had done it with his own hand.

See *In re Count de Toulouse Lautrec*, 102 F. 878 (7th Cir. 1900); *People* v. *Nesseth*, 127 Cal. App. 2d 712, 274 P.2d 479 (1954); *Warren* v. *State*, 247 Ala. 595, 25 So. 2d 698 (1946); *Biddeford Nat'l Bank* v. *Hill*, 102 Me. 346, 66 A. 721 (1907).

[11] See *Reg.* v. *Ritson*, 11 Cox's Crim. Law Cas. 352 (1869); 1 Hale P.C. ch. 64, at 683 (1847); 1 Hawk. P.C. ch. 70,

This Court has adverted to the majority interpretation of "false making" on two occasions, although both times without examining or ruling on the point. See *United States* v. *Staats*, *supra*, and *United States* v. *Davis*, 231 U.S. 183 (1913). Both cases concerned prosecutions for the making and use of false affidavits with intent to defraud the United States, in violation of predecessors of 18 U.S.C. 495.[12] The first clause of the statute at issue in *Davis* made criminally liable any person who "falsely makes, alters, forges, or counterfeits; or causes or procures to be falsely made, altered, forged, or counterfeited * * * any deed, power of attorney, order, certificate, receipt, or other writing" for the purpose of defrauding the government. The third clause of the statute applied to any person who transmitted or presented to any federal office or officer, "any deed, power of attorney, order, certificate, receipt, or other writing * * * [in support of a fraudulent claim], knowing the same to be false, altered, forged, or counterfeited." *Davis*, 231 U.S. at 187 n.1 (quoting Rev. Stat. § 5421). In both *Staats* and *Davis*, this Court found the prosecutions proper under the third clause of the statute. The Court assumed, without the need to decide, that the same prosecutions would have been improper under the first clause.[13]

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at 336 (6th ed. 1777); see also 2 J. Bishop, *Criminal Law* § 584 (9th ed. 1923) (quoting Coke).

[12] The statute at issue in the *Staats* case was Section 1 of the Act of Mar. 3, 1823, ch. 38, § 1, 3 Stat. 771-772. The statute at issue in the *Davis* case was a direct successor statute, Section 5421 of the Revised Statutes, which was codified as Section 29 of the Criminal Code of 1909, ch. 321, 35 Stat. 1094.

[13] The prosecution in *Staats* was brought only under the third clause of the statute. In *Davis*, the government did not contest the decision of the lower court that the first clause of Rev. Stat. § 5421 embraced only those documents that were forged or counterfeited, conceding the point without explanation.

There is no indication that, in 1939 or afterwards, Congress was aware of or intended to incorporate into Section 2314 the majority common law construction of the term "falsely made." Other than the broad purpose that the National Stolen Property Act was intended to serve, there is nothing in the legislative history of the 1939 amendment to the Act that is at all instructive on the question whether Congress intended to adopt the narrow common law meaning of the term "falsely made" or intended the term to have a broader meaning. Some enlightenment can be obtained, however, from Congress's action on a similar statute several years later.

In 1948, Congress reenacted and recodified Section 2314, as part of a recodification of the Criminal Code. Act of June 25, 1948, ch. 645, § 1, 62 Stat. 806. At the same time, Congress restructured a provision containing the same language as Section 2314 (concerning objects "falsely made, forged, altered, or counterfeited") in a manner demonstrating that Congress equated "falsely made" with "false" either in execution or in content.

Congress's action concerned Section 29 of the Criminal Code of 1909, ch. 321, 35 Stat. 1094 (recodified as 18 U.S.C. 73 (1946)), formerly Section 5421 of the Revised Statutes, the provision that had been interpreted by this Court in *Davis*. In that case, as noted above, the Court assumed without analysis that the term "falsely made" referred to forged instruments "in a technical sense." *Davis*, 231 U.S. at 189. By contrast, the

Court determined that a subsequent clause of the statute referred more broadly to "any and all fraudulent documents" when it spoke of "any * * * writing [presented by a person] * * * knowing the same to be false, altered, forged, or counterfeited" *Id.* at 188.

The Court's parsing of the statute depended on the fact that the third clause of the statute contained no specific reference linking the "false" writings it concerned to the "falsely made" writing identified in the first clause. By contrast, the Court classified a second clause in the statute, which contained the same language used in the third clause but included a specific reference to the falsely made writings of the first clause, as referring only to forged (and counterfeited) documents.[14] See *Davis*, 231 U.S. at 188. As the Court noted in *Staats*, upon which *Davis* relied (see 231 U.S. at 189):

[14] Rev. Stat. § 5421 (1878 ed.) provided in relevant part (emphasis added):

> Every person who falsely makes, alters, forges, or counterfeits; or causes or procures to be falsely made, altered, forged, or counterfeited[,] * * * any deed, power of attorney * * * or other writing, for the purpose of obtaining * * * from the United States * * * any sum of money;
>
> or who utters or publishes as true, or causes to be uttered or published as true, any *such* false, forged, altered, or counterfeited deed, power of attorney, * * * or other writing, knowing the same to be false, altered, forged, or counterfeited;
>
> or who transmits to, or presents at, or causes or procures to be transmitted to, or presented at, any * * * [federal officer or office], *any* deed, power of attorney, * * * or other writing, in support of, or in relation to, any account or claim, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited, shall * * * [be guilty of a crime].

> The deeds and other writings mentioned [in the third clause] are not connected with those in the preceding paragraph, as would have been natural, and almost of course, if intended to describe similar instruments. The language is "any deed, power of attorney," &c.; not, the aforesaid deed, which words must be in effect interpolated, * * * [if they are to refer to the forged instruments identified in the first clause].

Staats, 49 U.S. (8 How.) at 47.

It was thus well established by 1913 that submitting affidavits that were false in content, as well as those that were false because forged, to the federal government with intent to defraud constituted an offense under the third provision of Rev. Stat. § 5421. See *Davis*, 231 U.S. at 188.

Against this background, Congress in 1948 revised and recodified the Criminal Code. As this Court has long recognized, "the function of the Revisers of the 1948 Code was generally limited to that of consolidation and codification." *Muniz* v. *Hoffman*, 422 U.S. 454, 474 (1975). Absent a "clearly expressed" indication to the contrary, no change in substantive law can be presumed. *Id.* at 468-474; see also *id.* at 468 (noting that revision preserved "original intent of Congress"). It is clear that Congress intended no substantive amendment to Section 29. To the contrary, the Reviser's Notes, which guide construction of any alterations made during the 1948 revision (see *id.* at 472-474), stipulate that only "[c]hanges * * * in phraseology" occurred in recodifying Section 29 as Section 495. H.R. Rep. No. 304, 80th Cong., 1st Sess. A42 (1947).

Yet in the process of recodification, Congress altered former Section 29 in the one way that the *Davis* Court had deemed determinative: it inserted

the critical reference ("such") into the third clause of the statute. The "false" writings covered by that provision are now explicitly identified with the "falsely made" writings of the first clause.[15] Thus, Congress effectively equated the "falsely made" writings "know[n] * * * to be false" in the Section's last clause.

It is inconsistent with the aims of the 1948 recodification to conclude that Congress intended to abandon without comment the long-standing interpretation that the "false" writings of Section 29 included those writings that were false in content as well as those that were false in execution. It is much more probable that Congress's action demonstrated that it did not attach the dominant common law interpretation to the phrase "falsely made." The Congress that reenacted both Section 495 and Section 2314 in 1948 evidently assumed that the phrase "falsely made" referred to writing "know[n] * * * to be false." See also *Davis*, 231 U.S. at 188 (third clause of Section 29 covers "any and all fraudulent documents, whether forged or not forged"). Moreover, Congress's action in 1948 strongly suggests that Congress did not have the common law definition in mind nine years earlier when it first added the term "falsely made" to the National Stolen Property Act.

[15] As reenacted, Section 495 provided (emphasis added):

> **Whoever falsely makes, alters, forges or counterfeits any * * * writing, for the purpose of obtaining * * * from** the United States * * * any sum of money; or
>
> **Whoever utters or publishes as true any such false, forged, altered, or counterfeited writing, * * * knowing the same to be false, altered, forged, or counterfeited; or**
>
> **Whoever transmits to, or presents at * * * [any federal officer or office], any *such* writing in support of, or in relation to, any account or claim, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited * * * [shall be guilty of a crime].**

More recently, Congress has provided an even more unambiguous indication that it understands the term "falsely made" in Section 2314 not to be restricted to the predominant common law meaning of the term. In 1984, Congress amended Section 2311, which defines "securities" for purposes of Section 2314, to include "[any] valid or blank motor vehicle title." Motor Vehicle Theft Law Enforcement Act of 1984, Pub. L. No. 98-547, § 202, 98 Stat. 2770. Because there can be no such thing as a "counterfeit, valid," or "altered, valid" motor vehicle title, Congress's reference to valid motor vehicle titles in Section 2311 clearly indicates that it regarded the term "falsely made" to include genuine documents that contained false information when they were made. Otherwise, the statute's application to a "valid" but "falsely made" motor vehicle title would make no sense.

The legislative history of the 1984 amendment confirms this reading of Congress's view of the statute. The amendment was aimed at the title fraud problem, analogous to the one presented here, that attends trafficking in stolen vehicles. It was passed as part of the Motor Vehicle Theft Law Enforcement Act of 1984, Pub. L. No. 98-547, § 202, 98 Stat. 2770, "a comprehensive package of proposals designed to curb the theft of motor vehicles by preventing thefts and decreasing the ease with which certain stolen vehicles and their major parts can be

fenced." H.R. Rep. No. 1087, 98th Cong., 2d Sess. Pt. 1, at 2 (1984).[16]

The 1984 amendment was enacted after Congress heard testimony concerning the inability of the States independently to control the circulation of title documents. That testimony detailed weaknesses in state verification of title documents, inspection of vehicles, and title document security measures; problems created by lack of uniformity in title documents; and gaps in state legal authority to monitor and control the titling process, for example, by investigating cars with altered vehicle identification numbers. In particular, the testimony exposed, within the context of the stolen car market, precisely the type of problem that was exploited by the scheme in this case.[17] According to a submission from the Department of Transportation, a common technique for retitling stolen vehicles involves the submission of title documents that have been altered by modifying

[16] See *Motor Vehicle Theft Law Enforcement Act of 1983: Hearing on S. 1400 Before the Senate Comm. on Commerce, Science, and Transportation*, 98th Cong., 1st Sess. 1 (1983) (discussing rise and increasing professionalization of auto theft); *Motor Vehicle Theft Law Enforcement Act: Hearing on H.R. 2235 Before the House Comm. on Energy and Commerce*, 98th Cong., 1st Sess. (1983) [hereinafter *House Hearing*], at 2-3, 4, 73 (same). The bill sought to give "law enforcement officials at all levels of government" the tools to "crack criminal theft rings" and "to apprehend, successfully prosecute and punish motor vehicle thieves." H.R. Rep. No. 1087, *supra*, Pt. 1, at 2-3.

[17] See, *e.g.*, *House Hearing* 52-53, 60; *Motor Vehicle Theft Prevention Act: Joint Hearings on H.R. 4178 Before the House Comm. on Interstate and Foreign Commerce and the House Comm. on Foreign Affairs*, 96th Cong., 2d Sess. 304-305, 306-331 (1980) [hereinafter *Joint Hearings*].

a vehicle identification number to match that of a stolen automobile.[18] As in petitioner's title washing scheme, false (but genuine) documents are obtained for the stolen vehicle on the basis of the fraudulently altered originals.[19]

The clear import of the legislative history of the 1984 amendment to Section 2314 is that Congress, in its effort to deter trafficking in stolen vehicles, sought to ensure that title washing schemes would be subject to federal prosecution.[20] In order for the 1984 amendment to have that effect, however, the term "falsely made" must be understood to apply to title documents that are "genuine" but, after completion of the washing process, contain key false information. If petitioner's narrow construction of the term

[18] See *Joint Hearings* 314-315, 316-317.

[19] The scheme also closely parallels the one that was the subject of the prosecution in *United States* v. *Daly*, *supra*. In that case, a car theft ring operating in California routinely altered the vehicle identification numbers of stolen vehicles, and sent counterfeited certificates with matching identification numbers to Nebraska. The state vehicle registration policy there did not require a car's presence in the State nor did it provide that a State in which a vehicle had been registered would be notified of the impending registration transfer. Nebraska thus issued "genuine" motor vehicle titles, which defendants were successfully prosecuted for transporting in interstate commerce. 716 F.2d at 1502-1503.

[20] Although the hearing testimony focused on title reforms necessary to deter traffic in stolen vehicles, Joan Claybrook of the National Traffic Highway Safety Administration identified "odometer rollback" as another area of fraud. She noted that "[t]he title is also quite important for notification of the odometer reading at the time of the exchange of title." *Joint Hearings* 304-305.

"falsely made" is adopted, Congress's clear purpose to outlaw title washing schemes would be defeated.

In sum, the available evidence suggests that Congress has not intended the term "falsely made" in Section 2314 to be used in its narrow common law sense. Rather, Congress has legislated in reliance on the assumption that the term encompasses documents that are "falsely made" because they are produced by officials who are duped by false information. To give the term the narrow meaning that the common law courts accorded it would defeat both the general purpose of Section 2314 and Congress's specific intention that the statute reach fraudulent conduct such as the scheme in this case.[21]

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[21] As we have noted above (see note 10, *supra*), the type of fraudulent inducement represented by the title washing scheme in this case was considered by some courts at common law to be forgery. Thus, in the event that this Court determines that Congress intended to adopt the restrictive common law meaning of "falsely made" as equivalent to "forged," Section 2314 would still apply to prohibit this type of forgery. That construction of the term "falsely made" would limit the incongruity between imputing liability to those who alter or forge a motor vehicle title, and those who obtain the same result by submitting false information to state officials issuing the title.

If the case is decided in this manner, it would require remand for a new trial, because the trial court in this case did not instruct the jury to consider whether petitioner had transported the titles with the knowledge that they had been obtained by fraudulently inducing their issuance on the basis of false information.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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In The

Supreme Court of the United States

October Term, 1989

RAYMOND J. MOSKAL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ of Certiorari to the United States Court of Appeals for the Third Circuit

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

Upon review of the arguments advanced by the United States in its Brief, petitioner asks the Court to consider the following issues in response:

NEITHER THE LANGUAGE NOR PURPOSE OF SECTION 2314 INDICATE THAT IT APPLIES TO ALL DOCUMENTS WHICH CONTAIN INCORRECT INFORMATION

In an attempt to save Section 2314, the United States asserts that it was intended to cover all documents with

incorrect information, no matter how that information found its way into the document. Petitioner believes that this interpretation stretches the statute past the breaking point.

The United States suggests that there are two reasons why the term "falsely made" in the statute applies to the Virginia titles in this case. The first reason advanced by the government is that the term cannot be the equivalent of forged since it must have an "independent meaning." (Brief at 9)

Such a position assumes that the petitioner is correct in his initial assertion that the Virginia titles are neither forged, counterfeited nor altered within the meaning of the statute and that their only possible inclusion is within the "falsely made" language of the statute.[1]

While petitioner continues to believe (and the United States does not appear to challenge this belief) that most courts have found that the concepts of forgery and falsely made are synonymous under the common law,[2] even if this Court were to require an "independent meaning" as the United States suggests, such a conclusion would not

[1] Petitioner would note in passing that the terms counterfeiting and alteration are also viewed in the context of forgery and their definition often depends on the interchangeable use of these same words. *United States v. Tucker*, 473 F.2d 1290, 1293 (6th Cir.), *cert. denied*, 412 U.S. 942 (1973).

[2] For an additional view of the common law relationship between forgery and "false making" see Note, 72 Harv.L.Rev. 566-568 (1959).

be fatal to the petitioner's challenge. If, as the government urges, an independent meaning must be supplied – despite the admitted legislative silence on the question – such a meaning can be formulated which would *not* cover petitioner's activities yet still be in compliance with what the government perceives as the goal of the legislation.

Although the petitioner is much more comfortable in a criminal context to urge reliance upon past definitions of "falsely made" as the equivalent of forgery, if required by the government's proposition, petitioner is able to fashion several scenarios of criminal conduct in which "falsely made" is not exactly synonymous with forgery, yet does not include the conduct for which he was convicted under Section 2314.[3] Thus, "falsely made" would have the "independent meaning" sought after by the United States, yet would still not prohibit the conduct of the petitioner.

Of course, such a set of circumstances should alert even the government to the probability that their interpretation of the meaning of the statute cannot pass muster under various vagueness and notice tests long established by this Court. *McBoyle v. United States*, 283 U.S. 25 (1931); *See also, Dunn v. United States*, 442 U.S. 100, 112 (1979); *Huddleston v. United States*, 415 U.S. 814, 831

[3] Such scenarios might include one in which titles are obtained by bribery of the issuing authority or by the production of titles by the fraudulent manipulation of title generating equipment. Such titles would be considered "falsely made" under a plain meaning of the words yet not necessarily be forged, altered or counterfeit.

(1974); *Rewis v. United States*, 401 U.S. 808, 812 (1971); *Bell (Robert) v. United States*, 349 U.S. 81, 83 (1955).

Perhaps it was because of the problem of formulating a new definition that the United States asserts in its brief that the "independent meaning" theory *requires* the term to apply to "falsity effected by the insertion of false information in the process leading to the creation of a genuine document." (Brief at p. 9) Why the term in question *must* mean exactly this phrase remains a mystery.[4] Although the definition supplied would admittedly cover the challenged conduct, petitioner suggests that this is the only reason why the government has so defined the phrase.[5] Mindful of the Court's recent decision in *Taylor v.*

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[4] In some measure, the proposed definition rests upon Court of Appeals decisions that considered the interstate transportation of bogus financial instruments. See cases cited at page 9 of Brief of United States. All of these cases but one dealt with financial instruments – checks, drafts or certificates of deposit in which the invalidity of the information made the genuine paper worthless. The *only* case that considered automobile titles, *United States v. Daly*, 716 F.2d 1499 (9th Cir. 1983), *cert. dismissed* 465 U.S. 1075 (1984), dealt exclusively with stolen vehicles and titles that reflected fraudulent information on ownership and identity of the vehicle. The introduction of false information that makes a title invalid proof of ownership may well be one that is falsely made. Such is not the case in the present matter.

[5] Moreover, the proposed government definition would reach conduct which is not normally recognized as Federal criminal violations, i.e. inducing changes in the title sections for such items as horsepower, engine displacement, fuel used or vehicle weight (which may affect taxes) or description of vehicle (which may affect insurance rates). In addition, in the event of a title issuing authority mistake (a not unheard of

(Continued on following page)

United States, ___ U.S. ___, 110 S.Ct. 2143, 109 L.Ed.2d 607 (May 29, 1990), petitioner has searched in vain for the source of the government's proposed 'generic' definition.

Certainly legislative history does not support the proposed definition. The Courts of Appeals have split on this question and those courts whose rulings favor the government's proposal admit that it is an expansion over the traditional view. To advance it as the "better rule" simply because it will catch more people in criminal conduct is a remarkable display of insensitivity to the application of the criminal code.

THE LEGISLATIVE HISTORY DOES NOT INDICATE THAT THIS STATUTE APPLIES TO ALL DOCUMENTS WHICH CONTAIN INCORRECT INFORMATION

Recognizing that prior judicial decisions do not support the position to broaden the criminal coverage of Section 2314, the United States advances as its second reason for affirmance the notion that the petitioner's conduct is what the "falsely made" language was really intended to cover when the words were first engrafted into the statute in 1939. (Brief at 11) Petitioner suggests that nothing could be further from reality.

Admitting that the legislative history of the 1939 addition is "scanty," the United States, nevertheless, argues that the main purposes of the amendment are

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(Continued from previous page)

occurrence) the government proposal would appear to place an obligation – under penalty of ten years imprisonment – on the title holder to correct a DMV mistake. Surely, neither of these possibilities was intended by the statute.

clear. Yet the very argument the government advances doubles back upon itself upon examination since even the government admits that the reason for the 1939 amendment was the concern over counterfeited securities. If the argument of the United States is advanced to its eventual conclusion, the addition of the "falsely made" language should be made to apply in the context of an expansion upon counterfeiting activities – a genus of fraud in which the present petitioner was never involved.

It is significant to note that not even the government suggests that the 1939 amendment had anything at all to do with odometer rollback schemes. While there were no doubt title irregularities from the first day that automobile titles were required, there is no evidence that the inclusion of "falsely made" into the statute is even remotely connected to any perceived need for Federal law enforcement in title laundering operations.

To argue as the United States does in its brief that the strict construction of Section 2314 would be inconsistent with the broad anti-fraud purposes of the statute (Brief at 13) would be to manufacture a background for the 1939 amendment out of nothing but wishful thinking and would wink at the age old requirements for the interpretation of the criminal code.

While the United States attempts to put the question in the rather prejudicial light of declaring the incongruity of petitioner's argument with the purpose of the statute, the ultimate extension of the government's argument would eliminate the need for any statutory interpretation of criminal law since it would require the criminal code to contain but a single restriction: "Don't do anything

wrong that may later move in interstate commerce." Construction would be limited to the simple question of whether the legislature would have called the conduct wrong if it knew about it at the time of enactment. Such simplicity may win the war on crime but make losers of us all.

THE UNITED STATES IS INCORRECT IN ASSERTING THAT THE CONGRESS EVIDENTLY DID NOT ADOPT THE COMMON LAW WHEN IT INSERTED THE WORDS "FALSELY MADE" INTO THE STATUTE

It is clear that the United States recognizes that it faces an up-hill battle to convince this Court that Congress did not mean what everyone (or nearly everyone) thought "falsely made" meant when it inserted that language into the 1939 amendment. (Brief at 14) Undaunted by the task, however, the government suggests several reasons why Congress knew what it was doing before anyone else apparently did.

At the outset, there are several principles upon which the petitioner and the United States agree: We agree on the presumption that Congress intended the common law meaning of the terms it uses absent any contrary indications. *Bell (Nelson) v. United States*, 462 U.S. 356, 360 (1983); *Morissette v. United States*, 342 U.S. 246, 263 (1952). We agree that there is nothing in the language of Section 2314 to indicate a departure from the common law. We also agree that there is nothing in the legislative history of Section 2314 to indicate a departure from the presumption.

While it is true, as the United States argues, that this Court has, at times, departed from common law definitions, those departures have always been based on the intention of Congress and not the whim of a prosecutor. Petitioner suggests that the currently accepted meaning of the term "falsely made" is neither arcane or artificial, nor is it obsolete or inconsistent with the purpose of the statute.[6] Thus, the suggestion that a more "contemporary" meaning of the phrase is appropriate should be rejected by this Court.

Implicit in the position of the United States is the recognition that the common law analysis of the phrase "falsely made" would not include the petitioner's challenged conduct. While this implication is used to powerful effect throughout the brief to imply that a clever scheme which discovered a loophole in Section 2314 should not go unpunished, the inference misses one of the most basic parts of the petitioner's challenge – the government never elected to charge him with the interstate transportation of the admittedly altered titles *into* Virginia. The prosecutorial reason why the indictment alleged as offenses only the valid titles from Virginia remains unknown. The petitioner wishes to re-emphasize that it was not he who took advantage of a perceived

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[6] While the brief of the United States seeks to emphasize the extended age of a number of the cases relied upon in the false making area, Petitioner views this as more of an asset than a liability since these decisions now represent well recognized principles. While the questions they settled are no longer as frequently raised, their guidance has not diminished with age. *See, e.g. State v. Schoelerman*, 315 N.W.2d 67 (Sup.Ct. Iowa, 1982).

lapse in the statute but the prosecuting authority who made the decision to phrase the indictment in such a way that this appeal was required. Thus, the government's central argument that to give "falsely made" a restrictive meaning would defeat the purpose of the statute is not true. The government could have used the restrictive meaning on the altered titles sent from Pennsylvania. Petitioner submits that this was the activity which Congress intended to prevent. *See, e.g. United States v. Cotoia*, 785 F.2d 497 (4th Cir. 1986).

The United States correctly observes that there is nothing in the Act itself that even implies that Congress intended to broaden the scope of Section 2314 to make "falsely made" a term which expanded upon the common law. Because of that legislative fact, the government draws guidance for its proposition of broad interpretation from two other sources.

The first is an analysis for the history of *United States v. Davis*, 231 U.S. 183 (1913) and the re-codification of 18 U.S.C. 73 in 1948. Because the terms "falsely made" were included in both the *Davis* decision and the recodification, the United States suggests that because of the addition of a word in the re-codification that Congress rejected the narrow common law definition and intended Section 73 to cover documents which are both false in content and false in execution. (Brief at p. 18) The United States then makes the rather extraordinary leap of logic that Congress must also have rejected the accepted meaning of the phrase in the 1939 Amendments which inserted the language into Section 2314. Such a conclusion is more wishful thinking than historical fact. Moreover, the analogy which the government suggests, is far from a close

fit. The statute in question contained different language which supports the proposition of *Davis* on the one hand but does nothing to advance the argument of Congressional knowledge of Section 2314.

The ambiguity of the above example is recognized even by its proponent (Brief at 23) and is emphasized by the secondary argument advanced by the United States that the phrase "falsely made" should not be restricted because the 1984 amendment to Section 2311 defines securities in a certain fashion.[7] Petitioner is forced to admit that he is at somewhat of a loss to completely understand the logic of the government's argument in this area. It is true that the 1984 Act did include the "valid or blank motor vehicle title" language as a definition of a "security." While there is no dispute about the definition, how the United States can then conclude that Congress *must* have meant "falsely made" to include genuine documents with false information is a form of reasoning which petitioner simply does not understand.[8]

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[7] The brief of the United States sometimes leaves the impression that the Motor Vehicle Theft Law Enforcement Act of 1984, P.L 98-547, Title II, 98 Stat. 2770, amended both Section 2311 and 2314. This impression is not correct. The 1984 Act did not amend Section 2314 in any way.

[8] Moreover, petitioner also disagrees with several of the assumptions upon which the United States reaches its conclusion. Contrary to what the government contends, a motor vehicle title can be altered and remain valid. Moreover, irrespective of the "valid or blank" language, even the non-creative mind can fit motor vehicle titles into four or five other security descriptions contained in Section 2311.

In addition, the petitioner would note that the legislative hearings on the bill that eventually became the 1984 amendment described the securities definition section as directed at an existing problem of counterfeiting titles in connection with vehicle theft.[9] There is no mention of odometer rollback concerns in any of the hearings in the Motor Vehicle Theft Act.

The United States then attempts to bootstrap its position by referring to the legislative history of the 1984 Act. The government itself, however, recognizes that the 1984 Act was directed at theft – not odometer rollbacks. While it is true that automobile theft sometimes involves a form of title washing, it is critical to realize that such a scheme requires the alteration of ownership and identification data on titles – not odometer readings.

The possession of a genuinely issued title with a false VIN or owners name is an entirely different matter than the present case. Such a document is not valid as evidence of ownership for the vehicle in question. Because the false information goes to ownership which is the very essence of a title, the interstate transportation of such an invalid document is covered under Section 2314. It must clearly be understood that vehicle theft is a completely different problem than presented in petitioner's case. If the United States suggests that the 1984 Act is directed towards interstate car thefts, they are correct. However, if

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[9] Statement of Paul Gilliand, National Automobile Theft Bureau, House Hearing, 97-109, Motor Vehicle Theft Law Enforcement Act: Hearings on H.R. 4325 Before the House Comm. on Interstate and Foreign Commerce. 97th Cong. 2nd Sess. p. 80 (1982).

they are seen as suggesting that the 1984 Act was directed at the transportation of a valid title with an incorrect odometer reading, the government has missed the mark by a country mile.[10]

The argument of the United States in this area reveals another fatal flaw in their position. Assuming that the government has researched the earliest federal enforcement concern about odometer rollbacks to 1980 testimony (Brief at 24), to impute this concern to the 1939 amendments (as the United States does in the initial portion of its brief) is imaginative argument but unfortunately without basis.

Finally, petitioner would note that the United States proposal to broaden criminal coverage generates several public policy concerns. These issues were raised by the petitioner in his initial brief and the government has elected to not address the social policy reasons of why the

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[10] It is true that the United States is able to point to a single passing reference to odometer fraud in certain House testimony. (Brief at 24, n. 17) A review of that testimony reveals how little authority the reference lends to the government position. It is correct that Commissioner Claybrook did make a reference to odometer fraud in connection with titles. However the bill that she was testifying about did not have any relationship to Section 2314 and concluded that this was "another area of fraud," (p. 304) that Congress was presumably not concerned with at least in these hearings. Significantly, the Claybrook testimony is accompanied by a DOT manual entitled: "A Manual of Anti-Theft Guidelines for State Motor Vehicle Titling Programs" dated January 1980. The Manual recognizes the problem of state verification of title information (pp. 316-319) that leads to odometer fraud and recommends that the *states* undertake corrective action.

broader approach is less desirable. However, these concerns will not go away by ignoring them. Petitioner believes that they are additional factors that weigh against adopting the broader interpretation as the "better approach."

CONCLUSION

It is ironic that the interpretation of the meaning of this statute may be determined by cases decided even before the invention of the automobile. The principles of interpretation, however, remain intact because they are grounded on elemental fairness. That fairness is all that petitioner seeks.

The United States seeks to change the meaning of Section 2314 only because it would include more activity within the purview of the federal criminal code. Petitioner suggests that this is hardly a reason to call the expansion a "better rule." Recognizing that Courts should be loath to expand criminal coverage and that no such expansion was ever contemplated by the Congress for this statute, the Petitioner urges this Court to reverse the decision of the Third Circuit.

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